#### \*Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 1 of 178 PageID #: 1352

CONSUMER CREDIT TRANSACTION, THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED TO COLLECT THIS DEBT. CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

	v
·*	-0

Kelly Street Realty, Inc.,

Plaintiff.

100350

INDEX NO. FILE NO. 4778

-against-

SUMMONS

Place of Venue is Plaintiff's

place of business:

Laura Marrero.

928 Kelly Street Bronx, NY 10459

Defendant(s)

To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum of \$23,338.92 with interest thereon from May 1, 2003 together with costs of this action.

DATED: October 22, 2008

orradicing

By: Gary Kaxufich, Esq., Kayulich & Associates, P.C. Attorney for Plaintiff 30 Church Street Suite 26 New Rochelle, NY 10801

(914) 355-2074

Defendant's Address:

Laura Marrero 2303 Belmont Avenue, Apt. 5 Bronx, NY 10458-8343

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

#### COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$22,838.92 representing rental arrears for the months of May, 2003 balance of \$625.70; June, 2003 through and including October, 2004 at the agreed monthly sum of \$1,306.66 for the premises known as 928 Kelly Street, Apt.#1 Bronx, NY 10459 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

<u>SECOND ACTION</u>: Plaintiff seeks to recover damages from the defendant in the sum of \$0.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$22,838.92 plus interest from May 1, 2003 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of 0.000 plus interest from May 1, 2003 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

TRANSACCION DE CREDITO DEL CONSUMIDOR IMPORTANTEII UD. HA SIDO DEMANDADO! ESTE ES UN DOCUMENTO LEGAL-UNA CITACION! NO LA BOTE!! CONSULTE CON SU ABOGADO ENSEGUIDA! LE PUEDEN QUITAR PARTE DE SU SALARIO (EMBARGARLO). ISI UD. NO SE PRESENTA EN LA CORTE CON ESTA CITACTION LE PUEDEN CONFISCAR SUS BIENES (PROPIEDAD) Y PERJUDICAR SU CREDITO!! TAMBIEN ES POSIBLE QUE TENGA QUE PAGAR TODOS LOS GASTOS LEGALES (COSTOS)! SI UD. NO TIENE DINERO PARA UN ABOGADO TRAIGA ESTOS PAPELES A LA CORTE IMMEDIATAMENTE. VENGA EN PERSONA Y EL SECRETARIO LA CORTE LE AYUDARA.

COURTE CIVIL DE LA CI Condado de Bronx		Indice#
~======================================	X	Claim # 4778
Kelly Street Realty, Inc.,		
	Demandante.	CITATION  La razon de haber designado  Esta Corte es:
-contra-		928 Kelly Street Bronx, NY 10459
Laura Marrero,	Demandado(s).	
	Dellimateriologi	
	X	

Al demandado arriba mecionado:

USTED ESTA CITADO a comparecer en la Corte Civil de la Ciudad de Nueva York, Condado de Bronx a la oficiana del Jefe Principal de dicha Corte en 851 Grand Concourse, Bronx, NY 10451, in the COURTE CIVIL DE LA CUIDAD DE NUEVA YORK, NY en el Condado de Nueva York Ciudad y Estado de Bronx, dentro del tiempo provisto por la ley segun abajo indicado y presenter respuesta a la Demanda ajunta al Jefe de la Corte, si usted no comparece a contester, se dictara juicio en contra suya en la suma de \$23,338.92 con intereses May 1, 2003, incluyendo los costos de esta causa.

Fechado: October 22, 2008

By: Gary Kavuligh, Esq. Kavulich & Associates, P.C. 30 Church Street, Suite 26 New Rochelle, NY 10801 914-355-2074

Defendant's Address Laura Marrero 2303 Belmont Avenue Apt. 5 Bronx, NY, 10458-8343

Nota: La ley provee que: (a) Si esta citacion es entregada a usted personalmente en la Ciudad de Nueva York, usted debe comparece y responder dentro de Viente dias despuesde la entrega, (b) Si esta citacion es entregada a otra persona que no fuera usted personalmente, o si fuera entregada afuera de la Ciudad de Nueva York, o por medio de publicacion, o por otros medios que no fueran entrega personal a usted en le Ciudad de Nueva York, usted tiene Treinta dias para comparecer y responder la demanda, despues de haberse presentado prueba de entrega de a citacion al Jefe de esta Corte.

#### COMPLAINT

PRIMERA ACCIÓN: el Demandante procura recuperar daños del demandao (s) para la violación de un acuerdo de arriendo en la suma de \$22,838.92 dólares que representan atrasos de alquiter para los meses del equilibrio May, 2003 balance of \$625.70; dólares; June, 2003 a través de e incluso October, 2004 en la suma mensual concordada de \$1,306.66 local conocido come 928 Kelly Street #1 Bronx, NY 10459 juntos con gastos y desembolsos de esta acción y para tal otro alivio y adicional como el tribunal puede juzgar sólo.

SEGUNDA ACCIÓN: el Demandante procura recuperar daños del demandado en la suma de \$ 0 dólares que representan daños juntos con gastos y desembolsos de esta acción y para tal otro ativio y adicional cuando el Tribunal puede juzgar sólo.

TERCERA ACCIÓN: el Demandante procura recuperar daños del demandado en la suma de \$500.00 dólares que representan honorarios de abogados razonables juntos con gastos y desembolsos de esta acción y para tal otro alivio y adicional cuando el Triunal puede juzgar sólo.

POR OUE, el Demandante exige el juicio (A) en la Primera Acción, en la suma de \$22,838.92 Dólares más el interés a partir del May 1, 2003 juntos con gastos y desembolsos de esta acción y para tal otro alívio y adicional cuando el Tribunal puede juzgar sólo, (B) en la Segunda Acción, en la suma de \$0 dólares más el interés el 1 de May 1, 2003 juntos con gastos y desembolsos de esta acción y para tal otro alivio y adicional come el Tribunal pueden juzgar sólo, (C) en la Tercera Acción, en la suma de \$500.00 dólares más el interés el juntos con gastos y desembolsos de esta acción y para tal otro alivio y adicional cuando el Tribunal puede juzgar solo.

El Demandante en Esta Accion no esta obligado a ser licenciado por el Departamento de asuntos de Consumidor de la Ciudad de Nueva York,

#### AFFIDAVIT OF SERVICE CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Index	No.	100350/08
#114 #		

	lied,	
Attorneys: K	Lavulich & Associates, P.C.	
Address: 30	Characteristic and the operation of the control of	
	······································	
	KELLY STREET REALTY INC, vs.	
	LAURA MARRERO.	
State of New	York County of Nassau SS:	_
Aston G. Eva	ns II, being duly sworn deposes and says:	
Deponent is n	tot a party herein, is over 18 years of age. On November 8, 2008 at 6:41p.m.	
AC 2303 Bell	mont Avenue, Apt. 5, Bronx, NY 10458 served the within Summons and Complaint	
UII: LAUKA	MARRERO, Defendant therin named	
individual	By delivering a true copy of each to said recipient: deponent knew the person	
[] :	served to be the person described as said person therein.	
	·	
Corporation	By delivering to and leaving with and that deponent knew the	
[]	person so served and authorized to accept service on behalf of the Corporation	
Suitable Age	By delivering a true copy of each to a person of suitable age and discretion	_
Person		-, ;
Ω	state.	·
Affixing	By affixing a true copy of each to the door of said premises, which is recipients	•
to Door	[] actual place of business [X] dwelling house (place of abode) within the state	
[X]	El anno human first anno first anno first an anno first anno and anno and anno anno anno anno a	
Mail Copy	On November 10, 2008 deponent completed service under the last two sections by	
[X]	depositing a copy of the Summons and Complaint to the above address in a 1st Class properly addressed envelope marked "Personal and Confidential" in an official	
	depository under the exclusive care and custody of the United States Post Office in the State	
	of New York.	
	Deponent was unable, with due diligence to find the recipient or a person of suitable age	
and discretion	n having called thereat:	
	On the 5th day of November, 2008 at 9:45a.m.	
	On the 7th day of November, 2008 at 4:20p.m.	
	On the 8th day of November, 2008 at 6;4 lp.m.	
Description	A description of the Defendant, or other person served on behalf of the Defendant	
	Color of skin:Color of Hair:Age:Height:Weight:	
	<del></del>	
-	Deponent asked person spoken to whether the recipient was presently in military	
[X]	service of the United States Government or of the State of New York and was informed that the recipient is <u>not</u> . Recipient wore civilian clothes and no military uniform	
Other	antormed that the recipient is not. Recipient wore cryman cromes and no initiary agreem	
	Doe" neighbor stated that the Defendant is not in the military.	
	10 11/m /// // // //	
Sworn to before	he me on this day of // O Aston G. Evans M	
11	LIC# 1220069	
111	Merc York Street Downey Filler	
$\mathcal{O}$	County of Bons	
	Chent March	
	Lie No. 4111 Acce 2814	
	Commission Expiret June 5,20 LO	

Page 5

#### AFFIDAVIT OF SERVICE

CIVIL COURT OF I	THE	CHY	OF	NEW	YORK	
COUNTY OF BROX	ΥX					

Index	No.	100350/08
Filed:		

	w-4	- 110tt.
Attorneys:	Kavulich & Associates, P.C.	
	0 Church Street, Suite 26, New Rochelle	e, NY 10801 File No. 4778
	KELLY STREET REA	
	VS.	
	LAURA MARRERO	0,
State of New	York County of Nassau SS:	
Denoment is	ans II, being duly sworn deposes and says:	N
At: 2303 Bel	not a party herein, is over 18 years of age. On No mont Avenue. Apt. 5, Bronx, NY 10458 served	Liberty 8, 2008 at 6,41p.m.
on: LAURA	MARRERO. Defendant therin named	ine widini Summons and Complaint
		the within Summons and Complaint cont: deponent knew the person therein.  and that deponent knew the ce on behalf of the Corporation
Individual	By delivering a true copy of each to said recipie	int: deponent knew the person
L)	served to be the person described as said person t	therein.
Corporation	By delivering to and leaving with	therein.  and that deponent knew the ce on behalf of the Corporation  suitable age and discretion
[]	person so served and authorized to accept servi-	ce on hebalf of the Corroration
		I C
Suitable Age		suitable age and discretion
Person	Said premises is recipients [ ] actual place of be	usiness [] dwelling house within the
Ω	state.	•
Affixing	By affixing a true copy of each to the door of said	d premises which is evaluants
to Door	[] actual place of business [X] dwelling house	e (place of shode) within the state
[X]		The state of the s
Mail Copy	On Newson Land 2000 to annual to the	4.
{X}	On November 10, 2008 deponent completed service depositing a copy of the Summons and Complain	vice under the last two sections by
\ <i>\</i>	Chass properly addressed envelope marked "Persi	onal and Confidential" to an official
	depository under the exclusive care and custody a	of the United States Post Office in the State
	of New York.	
and discretion	Deponent was unable, with due diligence to fit having called thereat:	ind the recipient or a person of suitable age
~-ID 413DI4E10()	maring same district.	
	On the 5th day of November, 2008 at 9:45a.m	n,
	On the 7 <sup>th</sup> day of November, 2008, at 4:20m m	п
	On the 8th day of November, 2008 at 6:41p.m	R.
Description /	A description of the Defendant, or other person ser	rived on habolf at the Tark
[] Sex:C	olor of skin: Color of Hair: Age:	Height: Weight
X ]	Deponent asked person spoken to whether the rec	spient was presently in military
1.1	service of the United States Government or of the informed that the recipient is not. Recipient wore	e State of New York and was
Other		
[X]"John D	oe" neighbor stated that the Defendant is not in th	ne military.
Sworn to before	re me on this 10 day of 11/00	116 61 17
/17	4-17	Aston G. Evans M
6.47 1	1	LIC# 1220069
7 1 7	, v	

- La Karasti Tronsano Carasti Tantanas 20120

## Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 7 of 178 PageID #: 1358

COUNTY OF BRONX	INDEX NO. 100350/08
Kelly Street Realty, Inc.,	FILE NO. 4778
PLAINTIFF(S)	I/DGMENT
-AGAINST-	
Laura Morrero	
	928 Kolly Street Bronx, NY 10459
DEFENDANT(S)	Diolog 171 10To
AMOUNT CLAIMED LESS PMTS ON ACCT. INTEREST FROM 5/1/2003	\$22,838.92 \$10,319.75
<b>3.6 6.00 6. 1. 1. 1. 1. 1. 1. 1. 1</b>	\$33,158.67
COSTS BY STATUTE	\$50.00
SERVICE OF SUMMONS AND COMPLAINT FILING OF SUMMONS AND COMPLAINT	\$25.00 \$45.00
PROSPECTIVE MARSHALL'S FEE	\$40.00
NOTICE OF INQUEST	\$0.00
TRANSCRIPT & DOCKETING	\$0.02
	<u>\$160.00</u> TOTAL \$33,318.67
THEREIN AND ARE REASONABLE IN AMOUNT: AND ANSWER HEREIN HAS EXPIRED AND THE THE UNDERSIGNED AFFIRMS THIS STATEMEN' PERJURY. DATED: WESTCHESTER, NY	PECIFIED HAVE BEEN OR WILL NECESSARILY BE MADE OR INCURRED UPON FAILURE TO ANSWED THE TIME OF THE DEFENDANT TO APPEAR SAID DEFENDANT HAS AND APPEARED AND ANSWERED HEREIN. IT TO BE TRUE LINGER THE PENALTIES OF
2/12/2009	KAVULICH RASSOCIATES, P.C.
	BY: GARY KAVULICH, ESQ. O CHURCH STREET, SUITE 26
JUDGMENT ENTERED ON N	NEW ROCHELLE, NY 10801
SERVICE OF SUMMONS AND COMPLAINT IN TH	US ACTION ON THE DEFENDANT/CV
HEREIN HAVING BEEN COMPLETED ON 12/27/20 DAYS	008 WITHIN THE CITY OF NEW YORK ON THAT DAY AND MORE THAN 20
HAVING ELAPSED.	
DEFENDANT(S) TO APPEAR AND ANSWER HAV	E SERVICE THEREOF BY SUBSTITUED SERVICE ON DEFENDANT(S) INCE THE DAY OF COMPLETION OF SERVICE AND THE TIME OF SAID ING EXPIRED, AND HATES, P.C. ATTORNEY(S) FOR THE PLAINTIFF(S) IT IS, ADJUDGED THAT
RESIDING AT: 928 Kelly Street Bronx, NY 10459 RECOVER OF Laura Marrero	
RESIDING AT: 2303 Belmont Avenue Apt. 5 Bronx, 1 THE SUM OF \$22,838.92WITH INTEREST OF \$10, AND DISBURSEMENTS, AMOUNTING IN ALL TO THEREFORE.	NY 10458-8343 319.75 MAKING A TOTAL OF \$33,158.67,TOGETHER WITH \$160.00 COSTS THE SUM OF \$33,318.67 AND THAT PLAINTIFF HAVE EXECUTION
SECOND AND THIRD CAUSES OF ACTION ARE E	IEREBY WAIVED.
	CLERK

COUNTY OF BRONX

Kelly Street Realty, Inc.,

PLAINTIFF(S)

AGAINST

AFFIDAVIT OF FACTS
CONSTITUTING THE CLAIM
THE DEFAULT AND THE
AMOUNT DUE

Laura Marrero

DEFENDANT(S)

STATE OF NEW YORK COUNTY OF WESTCHESTER

SS: GARY KAVULICH, ESQ. HEREBY DEPOSES AND SAYS UNDER THE PENALTIES OF PURJURY, THAT DEPONENT IS THE ATTORNEY FOR THE PLAINTIFF(S) IN THE WITHIN ACTION; THIS ACTION WAS COMMENCED BY SUBSTITUED SERVICE OF THE SUMMONS AND COMPLAINT UPON DEFENDANT(S) AND IS AN ACTION FOR RENT DUE AND OWING FOR (AFTER APPLICATION OF PAYMENT AND SECURITY DEPOSIT)

May, 2003 balance of \$625.70

June, 2003 \$1,306.66

July, 2003 \$1,306.66

August, 2003 \$1,306.66

September, 2003 \$1,306.66

October, 2003 \$1,306.66

November, 2003 \$1,306.66

December, 2003 \$1,306.66

January, 2004 \$1,306.66

February, 2004 \$1,306.66

March, 2004 \$1,306.66

April, 2004 \$1,306.66

May, 2004 \$1,306.66

June, 2004 \$1,306.66

July, 2004 \$1,306.66

August, 2004 \$1,306.66

September, 2004 \$1,306.66

October, 2004 \$1,306.66

AT THE AGREED MONTHLY RENTAL OF \$1,306.66

ALL OTHER CAUSES OF ACTION ARE HEREBY WAIVED AND DISPOSED. AFTER A COMPLETE AND THOROUGH INVESTIGATION THE DEFENDANT IS FOUND NOT TO BE IN THE MILITARY AND RESIDES WITHIN THE CITY OF NEW YORK. RENT WAS NOT PAID BY ANY OTHER SOURCE. I MAKE THIS AFFIRMATION UPON INFORMATION AND BELIEF, A BELIEF PREDICATED UPON CONVERSATIONS WITH MY CLIENT, MY INVOLVEMENT IN THE PROCEEDING AND READING THE FILE IN THIS CASE.

SECOND AND THIRD CAUSES OF ACTION ARE HEREBY WAIVED.

WHEREFORE DEPONENT DEMANDS JUDGMENT AGAINST DEEP 10 10 17 5) FOR \$22/838.92 WITH INTEREST FROM

5/1/2003 TOGETHER WITH COSTS AND DISBURSEMENTS OF THE ACKNOX

KAVULICH & ASSOCIATES, P.C. BY: GARY KAVULICH, ESQ. 30 CHURCH STREET, SUITE 26 NEW ROCHELLE, NY 10801

TO THE DEFENDANT(S): PLEASE TAKE NOTICE THAT THE WITHIN IS A TRUE COPY OF A JUDGMENT MADE AND ENTERED IN THE WITHIN ENTITLED ACTION AND DULY FILED IN THE OFFICE OF THE CLERK OF THE COUNT ON

DATED: WESTCHESTER, NY

2/12/2009

YOURS, ETC., ATTORNEYS FOR PLAINTIFF

STATE OF NEW YORK, COUNTY OF SS:
BEING DULY SWORN, DEPOSES AND SAYS; THAT DEPONENT IS NOT A PARTY TO THE ACTION, IS OVER 18 YEARS OF AGE AND RESIDES IN

THAT ON DEPONENT SERVED A TRUE COPY OF THE WITHIN JUDGMENT AND NOTICE OF ENTRY THEREOF (EACH OF) THE FOLLOWING NAMED DEFENDANT(S) AT THE ADDRESS(ES) INDICATED (FOR EACH):

ase 1:10-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 9 of 178 PageID #: 1360 CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX Kelly Street Realty, Inc., INDEX NO. 100350/08 PLAINTIFF(S) AFFIDAVIT OF MAILING OF ADDITIONAL -AGAINST-NOTICE OF SUIT Laura Marrero DEFENDANT(S) STATE OF NEW YORK) COUNTY OF WESTCHESER) SS: GARY KAVULICH, ESQ., BEING DULY SWORN HEREBY DEPOSES AND SAYS: 1 I AM THE ATTORNEY FOR THE PLAINTIFF(S) HEREIN. 2. THE ABOVE ENTITLED ACTION IS AGAINST A NATURAL PERSON AND IS BASED UPON NON PAYMENT OF A CONTRACTUAL OBLIGATION. 3. ON 11/25/2008,I MAILED A COPY OF THE SUMMONS AND COMPLAINT IN THE ABOVE ENTITLED ACTION BY DEPOSITING THE ENVELOPE IN AN OFFICIAL DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE U.S. POSTAL SERVICE WITHIN NEW YORK STATE. SAID MAILING WAS BY FIRST CLASS MAIL IN A POSTPAID ENVELOPE, PROPERLY ADDRESSED TO THE DEFENDANT(S), THE ENVELOPE BORE THE LEGEND "PERSONAL & CONFIDENTIAL" AND THERE WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE THAT THE COMMUNICATION WAS FROM AN ATTORNEY OR CONCERNED AN ALLEGED DEBT. AT DEFENDANT(S): ALAST KNOWN ADDRESS AT: Laura Marrero: 2303 Belmont Avenue Apt. 5 Bronx, NY 10458-8343 -----PLACE OF EMPLOYMENT AT: THE ENVELOPE BORE THE LEGEND "PERSONAL & CONFIDENTIAL" AND THERE WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE THAT THE COMMUNICATION WAS FROM AN ATTORNEY OR CONCERNED AN ALLEGED DEBT. -----A KNOWN ADDRESS OF THE DEFENDANT AT: THIS ADDRESS IS NOT THE RESIDENCE OR PLACE OF EMPLOYMENT OF THE DEFENDANT. THE AFOREMENTIONED MAILING: ...... WAS RETURNED UNDELIVERABLE BY POSTAL SERVICE AND WAS RE-TOTHE DEFENDANT AT: SWORN TO BEFORE ME ON THIS 3 DAY OF Dec., 2008 DISHER ESQ. FRANK G. BUGLIONE Notary Public, State of New York No. 02805071150 Qualified in Westchester Co. 1 Commission Expires January 21, 4

Case 1:16 (2.01.02) \*CBA-RLM Document 55-4 Filed 01/29/18 Page 10 of 178 Page ID #: 1361

de de la company		
COUNTY OF BRONX	ECTTY OF NEW YORK	
~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~		
	····	INDEX NO:
Kelly Street Realty,	ſ <b>_</b> _	FILE NO: 4778
The state of the s	ruc., PLAINTIFF,	
	-AGAINST-	AFFIRMATION OF FACTS
Laura Marrero,	DEFENDANT(S)	CONSTITUTING THE AMOUNT DUE

Anto Culay

hereby deposes and says under the penalties of perjury, ss:

That deponent is the managing agent of Kelly Street Realty, Inc., Plaintiff in the within action; this action was commenced by substituted service of the summons and complaint upon defendant(s) and is an action for breach of a lease agreement in the amount of \$22,838.92 for the months May, 2003 balance of \$625.70; June, 2003 through and including October, 2004 at the agreed monthly rental amount of \$1,306.66 per month; (after application of security and after application of payments) no part having been paid, although duly demanded. All other causes of action are hereby waived and disposed of. After a complete and thorough investigation, as I have been informed by Plaintiff's counsel, the defendant(s) is/are found not to be in the military and reside(s) in the City of New York. Rent was not paid by any other source. I make this affirmation upon personal Knowledge.

WHEREFORE, Plaintiff demands judgment against defendant for \$22,838.92 with interest from May 1, 2003 together with costs and disbursements of the action.

Dated: 10/22/2008

Sworn to before me on this 3day of Novek

Notary Public

7,2009

Page 10

Kelly Street Realty, Inc.,	X	
	Plaintiff,	Index No. 100350/08 File No. 4778
-against-		AFFIDAVIT OF
Laura Marrero	Defendani(s).	INVESTIGATOR
STATE OF NEW YORK	)	
COUNTY OF NEW YORK	)SS.: }	
I am over 18 years of age, am no State of New York.	ot a party to this action	and reside in Westchester County,
I have been requested by Kavuli an investigation to ascertain if the time in military service for the p	ic Defendant(s) Laura i	attorney for the Plaintiff, to make Marrero is at the present ment.
On February 12, 2009, I Denise concerning the Defendant Laura	Miranda, contacted the Marrero military statu	e Defense manpower Date Center s.
I inputted the social security nur Manpower Data Center.	nber, as provided by th	e Defendant, into the Defense

Under the Defendant's social security number I received an affidavit from the Defense Manpower Data Center stating that the said Defendant is not currently in the military

Denise Miranda

FRANK G. BUGLIONE
Notary Public, State of New York
No. 02BU5071950
Gualified in Westchester County
Commission Expires January 21 2006

service of the United States and the State of New York (National Guard).

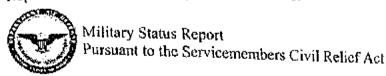
Sworn to before me this Day of Kl, 2009

Page 11

2011

Department of Defense Manpower Data Center

FEB-12-2009 11:38:21



≺ Last Name	First/Middle	Begin Date	Active Duty Status	Service/Agency
MARRERO	LAURA	Based on the inform	nation you have furnished, the DI ing that the individual is currently	MDC does not possess any yon active duty.

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Military.

Mary Mr. Snavely-Diston

Mary M. Snavely-Dixon, Director Department of Defense - Manpower Data Center 1600 Wilson Blvd., Suite 400 Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The Department of Defense strongly supports the enforcement of the Servicemembers Civil Relief Act [50 USCS Appx. §§ 501 et seq] (SCRA) (formerly the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's active duty status by contacting that person's Military Service via the "defenselink.mil" URL provided below. If you have evidence the person is on active-duty and you fail to obtain this additional Military Service verification, provisions of the SCRA may be invoked against you.

If you obtain further information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects current active duty status only. For historical information, please contact the Military Service SCRA points-of-contact.

See: http://www.defenselink.mil/faq/pis/PC09SLDR.html

WARNING: This certificate was provided based on a name and Social Security number (SSN) provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID: ELTQRUZKAX

## Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 13 of 178 PageID #:

#### Bronx County Civil Court CIVIL JUDGMENT

Plaintiff(s):

VS.

KELLY STREET REALTY INC.

Index Number: CV-100350-08/BX

Judgment issued: On Default

On Mation of:

Defendant(s):

LAURA MARRERO

KAVULICH & ASSOCIATES, P.C. 30 CHURCH STREET, SUITE 26, NEW

ROCHELLE, NY 10801-

Ģ. Amount claimed \$22,838.92 Cost By Statute \$50,00 \$0.00 Transcript Fee Less Payments made \$0.00 \$0.00 Index Number Fee \$45.00 County Clerk Fee Interest \$10,319,75 Service Fee \$25.00 Enforcement Fee \$40.00 Attorney feas \$0.00 Non Military \$0.00 \$0.00 Other Disbursements \$0.00 Notice of Trial \$0.00 Other Costs

Jury Demand \$0.00

**Total Damages** 

\$33,158.67 Total Costs & Disbursements

\$160.00 Judgment Total \$33,318.67

The following named parties, addressed and identified as creditors below:

Plaintiff creditor(s) and address

(1) KELLY STREET REALTY INC.

928 KELLY STREET, BRONX, NY 10459-

Shall recover of the following parties, addresses and identified debtors below

Defendant debtor(s) and address

i) LAURA MARRERO

2303 BELMONT AVENUE, APT 5, BRONX, NY 10458-

Judgment entered at the Bronx County Civil Court, 851 Grand Concourse, Bronx, NY 10451, in the STATE OF NEW YORK in the total amount of \$33,318.67 on 02/26/2009 at 11:05 AM.

Judgment sequence 1

4

Jack Baer, Chief Clerk Civil Court

Civil Court of the City of New York  County of Bran 34	Index Number
Kully Street Realty, Inc  Claimant(s)/Plaintiff(s)/Petitioner(s)  against  Laura Marker  Defendant(s)/Respondent(s)	DECISION/ORDER
Defendant never the Court &	CLKING to vacate the depault
Audgrunt entered against her	<sup>4</sup>
Defendant argues That che	VENER RECEIVED NO HER DI The POWENT
and that the vacated the appro	oboxxxx Subject princes du to
a fire which remited in her I	· · · · · · · · · · · · · · · · · · ·
shelter by the Ken Crow and	
Defendant Jurther aggues that	· ·
B. Decause the tenancy at	_
Plainty), oppose the motion on to	le grovend that defendant knowingly
	and lacks an excusable depault and
neritorins defense.	V
It is well-settled that Comple	favor disposition on the newts.
While He Coret is not unersundful	
Date /	Judge, Civil Court
CIV-GP-41 (January, 1998)	(2000) $(3)$ Page 14

···				
Civil Court of the City of New York County of	ndex Number <u>CV /00350 08 BX</u>			
Part 34				
Kelly Street Realty. Inc				
Claimant(s)/Plaintiff(s)/Petitioner(s)				
against	DECISION/ORDER			
1				
Laura Marren				
Defendant(s)/Respondent(s)				
elapsed since the judgment was en	Hered, serins quetions are			
Raised Regarding Home Whether The	dept here, to nit. Rental			
arrears, are attributable to the de	. A			
obvives frombling issue of a fine al	•			
subject preneixes, Siction 8 Rules prohibit the tenant being				
charged for more than his/her "tenant-share." of the Rent.				
Accordingly. The Court is satisfied	U			
come forward with an excusable de	bault and nextoning defense			
to warrant granting the instant order to show cause.				
The judgment is vacated and any and all income or ways garnishments, bank restraints and executions, sheribly or marshall				
garnishments, bank restraints and executions, sheribly or marshall				
lexies are racated. Any momies collected in connection with the				
Indeprent shall be returned forthwith.				
the answer annexed to the cuton	idant's order to show cause			
//////////////////////////////////////				
Date				
	Judge, Civil Court			
CTV-GP-41 (January, 1998) Page 2 9 8	Page 15			

Civil Court of the City of New York  County of BRINK  Part 34	Index Number 0V 100350-08 Bx
Kelly Strut Realty. Inc	
Claimant(s)/Plaintiff(s)/Petitioner(s)  against	DECISION/ORDER
Lawa Marrero  Defendant(s)/Respondent(s)	
1s deemed lifed and interpose	I in this matter and the
defendant may arrend care	within so days of the date of
This pedel.	
The matter is restored to the	e calendar for a pre-trial
conference July 8, 2015 at 9	30 A.M. Defendant is to suppoena
Section 8.	
Defendant shall serve a cop	ry of this DRAIR with notice of entry
within 10 days by 1st class 1	Hall with centificate of Mailing.
Shis constitutes the decision	
	Z
	XXX
ENTERED BRONX COUNTY	
5/7/15 MAY 1 2 2015	TINDERS
Date City of New York	Judge, Civit Count SAUNDERS  Provi. Page 16
CIV-GP-41 (January, 1994)	Page 16

34 (	
~ 1	Index Number: CV-190350-08/BX
Civil Court of the City of New York	Index Number: CV-10000
County of Bronx	
A STATE OF THE STA	ORDER TO SHOW CAUSE
KELLY STREET REALTY INCaqainst-	and any
LAURA MARRERO	1 Ch eastraints and executions, cross
	restitution and dismiss or stay the action for 90 days or restore to the calender or allow a
	anamasar angumer
	and processing processing processing processing
UPON the annexed affidavit of LAURA MARRERO	proposed answer  ), sworn to on March 10, 2015, and upon all papers and process  ey(s) show cause at:
1864 to 13 La	and the second
Let the Plaintiff(s) or Plaintiff(s) attorix Bronx Civil Court	,,,,,,
851 Grand Concourse	ey(s) show cause at:
Bronx, NY 10451	3/23/15
Part 34C - Room 504 📡	* FORMER AND
on MARCH 23, 2015 at 9:30 A)	M n order should not be made granting any of the following relies when
or as soon thereafter as counsel may be heard, why a	10ECI -
court deems appropriate:	Les sales
Vacating the defendants default and any judgment, I	thing restraints and executions, ordering restitution or dismission
staying the action for 90 days or restoring the action	to the estander or ellowing a proposed answer.
PENDING the hearing of this Order to Show Cause	and the entry of an Order thereon, let all proceedings on the
Plaintiff(s), Plaintiff(s) attorney(s) and agent(s) and a	my Marshal or Sheriff of the City of New York for the enforce
Judgment be stayed.	TREATE BY
SERVICE of a copy of this Order to Show Cause, a	nd annexed Affidavit, upon the:
Plaintiff(s) or named attorney(s):	<b>本面的红色</b>
(Judge to Initial)	Sheriff of Marshal:  (Judge to Initial)  (pry" by Personal Service by " in Hand Days of the state of the stat
by Personal Service by " In Hand Deliv	very" by Personal Service by " in Hand Designation ested by Certified Mail, Return Receipt Research
by Certified Mail, Return Receipt Requ	
by First Class Mail with official Post O	THEE OVERLISE CLASS IVIAN WITH OTHER PROPERTIES.
Dy Pitst Class Man with Official Lost O.	
Certificate of Mailing	Certificate of Mailing
Certificate of Mailing on or before <u>March</u> 1672, 2015, s	Certificate of Mailing hall be deemed good and sufficient
on or before <u>March</u> 1677, 2015, s	Certificate of Mailing hall be deemed good and sufficient
Certificate of Mailing on or before <u>March</u> 16 <sup>73</sup> , 2015, s  PROOF OF SUCH SERVICE	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part are date of this Order to Show Cause.
Certificate of Mailing on or before <u>March</u> 16 <sup>73</sup> , 2015, s  PROOF OF SUCH SERVICE	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part are date of this Order to Show Cause.
Certificate of Mailing on or before <u>March</u> 16 <sup>73</sup> , 2015, s  PROOF OF SUCH SERVICE indicated above on the retu  Mail to Attorney or party:	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part irn date of this Order to Show Cause.  Sheriff/Marshal:
Certificate of Mailing on or before <u>Harch</u> 1677, 2015, s  PROOF OF SUCH SERVICE indicated above on the retu  Mail to Attorney or party: Kavulich & Associates PC (Counsel for Plif),	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part arn date of this Order to Show Cause.  Sheriff/Marshal: Marshal of the City of New York
Certificate of Mailing on or before <u>March</u> 1672, 2015, s  PROOF OF SUCH SERVICE indicated above on the retu  Mail to Attorney or party: Kavulich & Associates PC (Counsel for Plif), 181 Westchester Avenue, Suite 500C,	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part irn date of this Order to Show Cause.  Sheriff/Marshal: Marshal of the City of New York Biegel, Stephen, Marshal
Certificate of Mailing on or before <u>Harch</u> 1677, 2015, s  PROOF OF SUCH SERVICE indicated above on the retu  Mail to Attorney or party: Kavulich & Associates PC (Counsel for Plif),	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part irn date of this Order to Show Cause.  Sheriff/Marshal: Marshal of the City of New York Biegel, Stephen, Marshal
Certificate of Mailing on or before <u>March</u> 1672, 2015, s  PROOF OF SUCH SERVICE indicated above on the retu  Mail to Attorney or party: Kavulich & Associates PC (Counsel for Plif), 181 Westchester Avenue, Suite 500C,	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part irn date of this Order to Show Cause.  Sheriff/Marshal: Marshal of the City of New York Biegel, Stephen, Marshal
Certificate of Mailing on or before <u>March</u> 1672, 2015, s  PROOF OF SUCH SERVICE indicated above on the retu  Mail to Attorney or party: Kavulich & Associates PC (Counsel for Plif), 181 Westchester Avenue, Suite 500C,	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part irn date of this Order to Show Cause.  Sheriff/Marshal: Marshal of the City of New York Biegel, Stephen, Marshal
Certificate of Mailing on or before March 167, 2015, s  PROOF OF SUCH SERVICE indicated above on the retu  Mail to Attorney or party: Kavulich & Associates PC (Counsel for Pht), 181 Westchester Avenue, Suite 500C, Port Chester, NY 10573	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part irn date of this Order to Show Cause.  Sheriff/Marshal: Marshal of the City of New York Biegel, Stephen, Marshal
Certificate of Mailing on or before <u>March</u> 1672, 2015, s  PROOF OF SUCH SERVICE indicated above on the retu  Mail to Attorney or party: Kavulich & Associates PC (Counsel for Plif), 181 Westchester Avenue, Suite 500C,	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part irn date of this Order to Show Cause.  Sheriff/Marshal: Marshal of the City of New York Biegel, Stephen, Marshal 109 W 38 Street Suite 200 New York, NY 10018-3615
Certificate of Mailing on or before Harch 167, 2015, s  PROOF OF SUCH SERVICE indicated above on the retu  Mail to Attorney or party: Kavulich & Associates PC (Counsel for Plif), 181 Westchester Avenue, Suite 500C, Port Chester, NY 10573  March 10, 2015	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part arn date of this Order to Show Cause.  Sheriff/Marshal: Marshal of the City of New York Biegel, Stephen, Marshal 109 W 38 Street Suite 200 New York, NY 10018-3615  Hon. Venia Salinder Civil Court Judge (NYC)  (Length
Certificate of Mailing on or before Harch 167, 2015, s  PROOF OF SUCH SERVICE indicated above on the retu  Mail to Attorney or party: Kavulich & Associates PC (Counsel for Plif), 181 Westchester Avenue, Suite 500C, Port Chester, NY 10573  March 10, 2015	Certificate of Mailing hall be deemed good and sufficient I may be filed with the Clerk in the Part irn date of this Order to Show Cause.  Sheriff/Marshal: Marshal of the City of New York Biegel, Stephen, Marshal 109 W 38 Street Suite 200 New York, NY 10018-3615

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Kelly street reality inc,

Plaintiff,

- against -

LAURA MARRERO,

Defendant.

Index No. cv10035008bx

AFFIDAVIT IN SUPPORT OF AN ORDER TO SHOW CAUSE To Vacate a Judgment For Failure to Answer

Movant's address: 1468 BRYANT AVE, Apt. 4B BRONX, NY, 10460

State of New York, County of Bronx ss.:

LAURA MARRERO, being duly sworn, deposes and says:

- I am a defendant and I am making this request in support of the Order to Show
  Cause to vacate a default judgment, and dismiss this case for lack of personal
  jurisdiction pursuant to CPLR 5015(a)(4).
- The court lacks personal jurisdiction because the Summons and Complaint were not served properly. I WAS NOT SERVED I DID NOT RECIEVE ANY PAPER REGARDING THIS CASE AND I WAS BURNED OUT OF THIS RESIDENCE.
- Alternatively, the default judgment should be vacated pursuant to CPLR 5015(a)(1)
  and the case restored to the calendar and the attached Proposed Answer deemed
  timely filed.
- 4. I did not file an answer to the Complaint with the court because of the following excusable default:
  - I never received the court papers.
- 5. I have the following meritorious defense(s):
  - a. I do not owe the money.
  - b. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA

WHY I AM BEING SUED AND NEVER FOUND OUT ABOUT THIS UNTIL I STARED BEING GARNISHED FROM MY PAY CHECK WHICH IS NOW YEARS LATER AFTER LIVING THEIR.

- 6. I want to tell the judge the following: I DONT BELIEVE I OWE THIS DEBT ME AND MY FAMILY WERE BURBNED OUT OF THIS APARTMENT WE LOST EVERYTHING YEARS LATER I AM BEING SUED MOVEING FOWARD THIS GARNISHMENT HAS PUT A FINICHAL HARDSHIP ON ME AND MY FAMILY.
- 7. I have not asked for a previous Order to Show Cause in this case.
- 8. My salary has been garnished. I am employed at ALIIED BARTON SECURITY
  SERVICES LLC ATTN PAYROLL 161 WASHINGTON ST STE 600 8 TOWER
  BRDG CONSHOHOCKEN PA 19428.

#### Relief

9. WHEREFORE, I request that the judge vacate any judgment, lift any and all restraints and executions, order restitution, and upon vacatur, dismiss this case for lack of personal jurisdiction, or in the alternative, deem the attached Proposed Answer timely filed, restore the case to the calendar, grant me permission to serve these papers myself, and grant me such other and further relief as may be just.

Sworn to before me this \_\_\_\_\_ day

Notary Public or Court Clerk

I.D. Presented Type: No I.D. Provided

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX	Index No. cv10035008bx PROPOSED ANSWER CONSUMER			
Kelly street reality inc, Plaintiff,	PROPOSED ANSWER CONSUMER CREDIT TRANSACTION			
- against	Movant's address: 1468 BRYANT AVE, Apt.			
LAURA MARRERO,  Defendant.	4B BRONX, NY, 10460			

LAURA MARRERO, answers the Complaint as follows:

- 1. General Denial: I deny the allegations of the Complaint.
- 2. I do not owe the money.
- 3. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY
  UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA WHY I AM BEING
  SUED AND NEVER FOUND OUT ABOUT THIS UNTIL I STARED BEING
  GARNISHED FROM MY PAY CHECK WHICH IS NOW YEARS LATER AFTER
  LIVING THEIR.
- I have the following counterclaim(s): I WANT WHAT WAS GARNISHED. I am seeking \$3,000.

#### VERIFICATION

State of New York, County of Bronx ss.:

LAURA MARRERO, being duly sworn, deposes and says: I am the Defendant in this action, I have read the Proposed Answer Consumer Credit Transaction and know the contents to be true to my own knowledge, except for those matters alleged to be on information and belief, and as to those matters, I believe them to be true.

Laura Marrero, Defendant

Sworn to before me this 15 day
of, 20
Notary Public or Court Clerk
Notary Public or Court Clerk



## NEW YORK CITY MARSHAL Stephen W. Biegel

109 West 38th Street, Suite 200 • New York, NY 10018

Phone: (212) MARSHAL (627-7425) • Fax: (212) 398-2000

MarshalBiegel@aol.com • www.NewYorkCityMarshal.com
October 22, 2012

ALLIED BARTON SECURITY SERVICE LLC ATIN PAYROLL 161 WASHINGTON ST STE 600 8 TOWER BRDG CONSHOHOCKEN PA 19428 367084-NY OWZ

JUDGMENT CREDITOR KELLY STREET REALTY INC

LAURAMARRERO
2275
JUDGMENT DERTOR

INCOME EXECUTION - NOTICE OF LEVY PURSUANT TO SEC. 5231 OF THE CPLR

Please take notice that the enclosed Income Execution is a levy on the salary, wages, earnings, commissions, etc of the Judgment Debtor (your employee) and that you are required to immediately deduct and remit 10% of the debtor's gross salary, wages, earnings, commissions, etc.

Keep the Income Execution for your files. If there is a prior Income Execution against the Judgment Debtor, keep this one on file until completion of the prior and then start remitting on this Income Execution. If the employee resigns and later is rehired, the Income Execution is still in effect unless the Marshal advises you to the contrary in writing.

Please include the judgment debtor's name and the docket # below to receive proper credit.

MARSHAL'S DOCKET # G4150

 JUDGMENT
 \$33,318.67

 STATUTORY MARSHAL FEES
 \$20.00

 POUNDAGE
 \$2,216.47

 EXPENSE
 \$12.39

 FILING FEE
 \$0.00

 INTEREST TO DATE
 \$10,978.44

 TOTAL
 \$36,545.97

In addition, interest from 10/22/12, will be calculated and when payments approach completion, you will be notified of the final balance due. Please fill out and return the attached form:

(SMDsi

Page 22

Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 23 of 178 PageID #:

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX
--------------------------------------------------------

Kelly Street Realty, Inc.,

Plaintiff.

4778.0 File No.

Court Index No. 108350/08

INCOME EXECUTION

Against

Laura Marrero,

Defendant(a).

The People of the State of New York

The following judgment was duly entered in favor of the plaintiff (judgment creditor) in the office of the clerk of the within court:

Court of Original Butty

Rutay Date

Original Amount

Amount Par

Plus Interest Prom

GIVIL COURT OF THE CITY OF NEW YORK 2/26/2009 12:00:06 AM \$33,318.67

\$33,318.67

2/26/2009 12:00:00

ΑM COUNTY OF BRONX

The judgment was recovered against And transcripted with the county clerk(e) of

Laura Marrero Break

defendant (judgment debtor)

WHEREAS, this execution is issued against

Laura Marcoro

defendant (judgment deblor)

if hose last known address is:

Apt. 5 Bronz, NY 10458-8348

Apt. 5 Bronz, NY 10458-8348

and said defendant (judgment debter) is receiving or will receive from the Employer" whose name and address is and said defendant (judgment debter) is receiving or will receive from the Employer" whose name and address is and said defendant (judgment debter) is receiving or will receive from the Employer" whose name and address is and said defendant (judgment debter) is received from the Employer" whose name and address is and said defendant (judgment debter) is received from the Employer whose name and address is and said defendant (judgment debter) is received from the Employer whose name and address is and said defendant (judgment debter) is received from the Employer whose name and address is a said defendant (judgment debter) is received from the Employer whose name and address is a said defendant (judgment debter) is received from the Employer whose name and address is a said defendant (judgment debter) is received from the Employer whose name and address is a said defendant (judgment debter) is received from the Employer whose name and address is a said defendant (judgment debter) is received from the Employer whose name and address is a said defendant (judgment debter) is received from the Employer whose name and address is a said defendant (judgment debter). Conshohocken, PA 19428 ATTN: Payroll

More than \$

per week, to wit \$

Son Sec. and/ pension No-

to be paid weekly installment of \$ Bureno, Office or Subdivision

each:

Title or position No

You are directed to satisfy the judgment with interest together with your fees and expense, out of all monies now and hereafter due owing to the judgment debtor from the Employer pursuant to CPLR % 5231 d 15 U.S.C 1871, et. Seq

Direction to Judgment Dobtor: You are notified and commanded within 20 dayso start paying to the Enforcement Officer serving a copy of this Income Execution on your installments amounting to 10(but no more than the Federal limits set forth in I. Limitations on the amount that use he withheld, below) of any and all calary, wages or other income, including any and all overtime enruings, transmissions or other irregular compensation received or bereafter to be received from your Employer and to continue paying such installments until the judgment with interest and the fees and expenses of this Income execution are fully paid and satisfied, and if you fail to do so this Income Execution will be served upon the Employer by the Enforcement Officer.

Direction to the Employer: You are commanded withhold and pay over to the Enforcement Officer serving a copy of this Income Execution on you: installments amounting to 10% (but no more than the Federal limits set fourth in L Limitations on the amount that can be withheld, below) of any and all salary, wages or other income, including any and all overtime earnings, commissions or other integrals companisation now or hereafter becoming due to judgment debter until the judgment with interest and fees and expenses of this Income Execution are fully paid and satisfied.

Dated. 9/26/2012

Gazy Kavulich Esq. Kavulich & Associates, P.C. 181 Westchester Avenue, Suite 5000 Port Chester, NY 10573 (914) 355-2074

"Employer, " herein, includes any payor of money to Judgment Debtor.

#### Important Statement

This income execution directs the withholding of up to 10 percent of the judgment debtur's gross income. In certain cases, however, state or federal law does not permit the withholding of that much of the judgment debtor's gross income. The judgment debtor is referred to New York Civil Practice Law and Rules % 5231 and 15 United State Code % 1671 at seq.

#### I. Limitation on the amount that can be withheld

A. An income execution for installments from a judgment deblor's gross income cannot exceed ton percent (10%) of the judgment debtor's gross income,

## Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 24 of 178 PageID #: 1375

ß	If a judgment debtur' weekly dispo	cable earnings are less than thirty	(30) times the current federal minimum wage made from the judgment debtor's curnings under		
Ċ	this income execution.  A judgment debtor's weekly disposable earnings cannot reduced below the amount arrived at by multiplying thirty (30).				
D. If deduction	time the current federal minimum	blor's earnings under any orders i	for alimony, support or maintenance for family		
E, if deduction members or fo deductions me	as the made from the judgment debion is are being made from a judgment de friner spouses, and those deductions a may be made from the judgment debtor?	to earning under this inventor for the less than twenty-five percent 26 a carnings under this inventor execu	alimony, support or maintenance for family (%) of the judgment debtor's disposable earnings, tion. However, the amount errived at by adding earning under any orders for alimony, support or (25) of the judgment debtor's disposable earnings.		
NOTE: Noth	ting in this notice limits the proper mintenance for family members o	rtion or amount, which may be r former spouses.	deducted under any order for alimony,		
	tion of Limitations				
able E	arnings — Diegocable carning am Bat withheld (for example, taxes, social sec	naide of my individual's enimps and unity and unemployment influence	after deducting those amounts that are required b, but not deduction for union dues, insurance		
Gross Income trusts, before	· Gross income is salary, wages or oth any deductions are made from such it	ar income, including any and all ov scame.	ertime earnings, commissions, and income from		
Diustrations	regarding earnings				
(a) 30 times	le cerninge is: federal minimum wego	Amount to pay or dedu	ct from earning under this income execution		
is <sup>:</sup> (\$175.50 <sup>:</sup>	*) or less	No payment or deduction	allowed		
Wage (\$1	federal minimum wage		yer 30 times the federal minimum wage lisposable earnings, or 10% of gross earnings.		
	(c) 40 times the federal minimum wage (\$234.00* The less of 25% o disposable earnings or 10% of gross earnings.				
III. Notice: CPLR% 524	You may be able to challenge this 40	income execution through the p	procedures provided in CPLR% 5231 (i) and		
If you claim to	you should det promptly because the m that the amount of your income being d you should contact your employer or of	oney will be applied to the judgmen leducted under this income execution for verson paying cour income. For	on exceeds the amount permitted by state or it, on exceeds the amount permitted by state or rther, YOU MAY CONSULT AN ATTORNEY, dures through which an income execution can be		
CPLR % 52	31 (i) Modification. At any time, the oution.	a judgment debtor may make a	meton to a court for an order modifying an		
procedure. In Based upon	cluding the use of income executions. \$4,25 minimum bourly wage. Recalcul	2	time, the judgment debtor may make a motion to a be use of any post judgment enforcement minimum hourly wage changes.		
Inst	allments paid to	bave satisfied	the judgment to the extent of \$		
Principal ar	nd \$interest				
Return to th	ne judgment creditor or his attorne	Levying officer	County  because of inability to		
Find garms	hae in the county		Decause of inability to		
1 M p	• • • • • • • • • • • • • • • • • • •	Levying officer	County		

Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 25 of 178 PageID #: 1376

COUNTY OF BRONX: PART 34	INDEX NO. 100350/08 FILE NO. 4778		
KELLY STREET REALTY, INC.,			
Plaintiff,	ል በማየጀጀን ክለኝ ል ምክረጉኤኝ ጀንሪ		
-against-	AFFIRMATION IN OPPOSITION		
LAURA MARRERO,			
Defendant.			
X			

Matthew Kasper, Esq., an attorney duly admitted to practice law before the Court of the State of New York, hereby affirms under the penalty of perjury:

- 1. I am an associate of Kavulich & Associates, P.C., attorneys for the Plaintiff herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated upon information and belief, as to those matters I believe them to be true. The basis of my belief is information supplied to me by my client, information contained within the court file and information maintained within my office.
- 2. I make this affirmation in opposition to the Defendant VERONICA MORENO's Order to Show Cause which seeks to vacate the instant judgment issued on default. Please see Respondent's instant Order to Show Cause and Proposed Answer annexed hereto as Exhibit "1."

#### STATEMENT OF THE UNDISPUTED FACTS

- 1. The parties executed a lease agreement for the premises known as 928 Kelly Street, Unit I, Bronx, New York, Plaintiff's building. Annexed hereto as Exhibit "2" is the affidavit of Anto Lulaj, agent of Plaintiff,
- 2. The term of the lease agreement was for two years commencing October 5, 2002 and ending October 14, 2004.

- 3. Almost immediately thereafter, Defendant began to accumulate rental arrears.
- 4. As such, Plaintiff commenced a nonpayment proceeding in Housing Court under the L&T Index No. 2898/2012.
- Defendant vacated the subject premises on or about October 31, 2014 leaving a substantial rental arrears balance.
- 3. As such, Defendant owes Plaintiff the sum of \$22,838.92 representing rental arrears for the May, 2003 balance of \$625.70 and for the months of June, 2003 through and including October, 2004 at the agreed monthly rent of \$1,306.66.
- 4. Defendant was served with a summons and complaint via conspicuous service on November 8, 2008. Annexed hereto as Exhibit "3" is a copy of the summons, complaint, and affidavit of service.
- 5. The Plaintiff had not been contacted by the Defendant since they vacated the subjectpremises and until many years after she was notified by the wage garnishment that was issued by your affirmant's office. Annexed hereto as Exhibit "4" is a copy of the income execution.
  - 6. Defendant now moves to vacate the default judgment issued on February 26, 2009.

# THE DEFENDANT'S INSTANT MOTION DOES NOT DEMONSTRATE AN EXCUSABLE DEFAULT AND MERETORIOUS DEFENSE. THEREFORE THE MOTION SHOULD BE DENIED

- 7. In order to prevail on this instant motion, Defendant must prove both an excusable default and meritorious defense as upon showing of both of those prongs, vacating a default judgment is proper. CPLR 5051(a)(1); Bank of Am. v. Faracco, 89 AD3d 879 [2d Dep't 2011]; Community Preserve. Corp. v. Bridgewater condominiums, LLC., 89 AD3d 784 [2d Dep't 2011].
- 8. Moreover, should Defendant demonstrate a reasonable excuse for the default, a Court must nonetheless uphold the default judgment when the Respondent's papers submitted in support thereof are replete with self-serving, vague, unsubstantiated denials, and unsupported

legal conclusions. Thapt v. Lutheran Med. Ct., 89 AD3d 837 [2d Dep't 2011]; Garal Wholesalers, Ltd. v. Raven Brands, Inc., 82 AD3d 1041 [2d Dep't 2011].

- 9. It is respectfully stated to the Court that Defendant has failed to demonstrate both prongs and that this motion must be denied.
- 10. Defendant alleges that she was not served with the summons and complaint, however she offers no support for this such as an explanation of where she was living at the time or a suggestion as to how process did not end up in her possession.
- 11. A process server's affidavit constitutes prima facie evidence of proper service pursuant to CPLR 308(4). City of New York v. Miller, 2010 NY Slip Op 03059 (2d Dep't 2010).
- 12. Defendant's self-serving and conclusory statements are insufficient to rebut the presumption of service.
  - 13. Moreover, Defendant alleges that she was "burned out of this residence."
- 14. Again, without support or even an iota of specificity as to when this purported fire took place, and what happened during the fire requiring Defendant's vacature.
- 15. In fact, Defendant vacated the apartment due to the commencement of a housing court case as a result of her failure to pay rent. Please see the aforementioned Exhibit "2."
- 16. Accordingly, Defendant fails to set forth a legally cognizable meritorious defense and reasonable excuse for her default.

### DEFENDANT IS CHARGED WITH NOTICE OF THE INSTANT LITIGATION SUCH THAT HER APPLICATION IS UNTIMELY AS A MATTER OF LAW

- 17. CPLR 317 requires an applicant seeking to vacate a default judgment to have an application within one year of knowing of the judgment.
- 18. A New York City Civil Court, in a case on point applying CPLR 317 and involving a judgment-debtor's Order to Show Cause pursuant to CPLR 5051 seeking vacatur of a default judgment after ignoring an income execution of twenty-months denied the judgment-debtor's

application. Elite Recovery Services. Inc. v. R. Howard Helrich, 31 Misc. 3d 1222, 930 N.Y.S.2d 174 (2011).

19. In denying the judgment-debtor's application for vacatur, the Court discussed its rationale as follows:

Defendant has not set forth any excuse as to why he ignored an income execution against his wages for twenty-months. The execution went into effect in June 2009 and defendant did not make this motion until February 2011. It is not credible that the defendant did not have either actual or constructive knowledge of the litigation as he had been having his wages garnished for over a year. As noted above, the policy of this court is to try to have all cases decided on the merits. However, the justice system assumes that people will act to challenge a judgment wrongfully entered against them within a reasonable amount of time after obtaining notice of it and that they will act in an expeditious manner to address such a situation. The actions of the defendant do not even approach "diligence" let alone "due diligence."

Id. at \*4.

- 20. Here, Defendant was served with an income execution on September 26, 2012.
- 21. As a result, her income was continuously garnished from **December 5, 2012** (the first payment) through to the service of the instant Order to Show Cause on or about March 10, 2015 over two years.
- 22. In fact, Defendant states that she "never found out about this until I started being garnished from my pay check ...." Please see the aforementioned Exhibit "1." (emphasis added).
- 23. Defendant admits knowing about the garnishment the day it began, yet waited over two years to make the instant application which, as held in *Elite Recovery*, is not even close to due diligence as required by CPLR 317.
- 24. Therefore, even assuming *arguendo* that the Defendant offers an excusable default and meritorious defense, the Defendant's failure to address her default in almost 2 years combined

with her knowing disregard for the aforementioned execution measures should not be countenanced.

25. As such, Defendant's Order to Show Cause should be denied as untimely pursuant to CPLR 317.

WHEREFORE, as no legal or equitable basis has been stated or exists, Plaintiff respectfully asks that this Court deny the instant motion.

Dated: April 10, 2015 Port Chester, NY

> Kavufich & Associates, P.C. By: Matthew Kasper, Esq.

Attorney for Plaintiff

181 Westchester, Ave., Suite 500C

Port Chester, NY 1057

(914) 355-2074

## **EXHIBIT 1**

Index Number: CV-100350-08/BX  ORDER TO SHOW CAUSE To vacate the defendants default, and any judgment, lift restraints and executions, order restriction and dismiss or stay the action for 90 days or restore to the calender or allow a proposed answer  10, 2015, and upon all papers and proceedings
ORDER TO SHOW CAUSE To vacate the defendants default, and any judgment, lift restraints and executions, order restitution and dismiss or stay the action for 90 days or restore to the calender or allow a proposed answer  10, 2015, and upon all papers and proceedings
ORDER TO SHOW CAUSE To vacate the defendants default, and any judgment, lift restraints and executions, order restitution and dismiss or stay the action for 90 days or restore to the calender or allow a proposed answer  10, 2015, and upon all papers and proceedings
To vacate the defendants detaut, and experience judgment, lift restraints and executions, order restitution and dismiss or stay the action for 90 days or restore to the calender or allow a proposed answer 10, 2015, and upon all papers and proceedings
115
made granting any of the following relief as the
xecutions, ordering restitution or dismissing or
wing a proposed answer.
rder thereon, let all proceedings on the part of the
f of the City of New York for the enforcement of sa
upon the: Marshal: nitial)
by Personal Service by "In Hand Delivery" by Certified Mail, Return Receipt Requested by First Class Mail with official Post Office Certificate of Mailing
) fi

PROOF OF SUCH SERVICE may be filed with the Clerk in the Part Indicated above on the return date of this Order to Show Cause.

Mail to Attorney or party: Kavulich & Associates PC (Counsel for Pht), 181 Westchester Avenue, Suite 500C, Port Chester, NY 10573

Sheriff/Marshal:
Marshal of the City of New York
Biegel, Stephen, Marshal
109 W 38 Street
Suite 200
New York, NY 10018-3615

March 10, 2015

DATE

Hon. Verna Saundert, Civil Coun Judge (NYC)

CIVIL	COU	RTO	FI	HE	CITY	OF	NEW	YORK
COUN	JTY O	)F BE	NO:	1X				

Keily street reality inc,

Plaintiff,

- against -

LAURA MARRERO,

Defendant.

Index No. cv10035008bx

AFFIDAVIT IN SUPPORT OF AN

ORDER TO SHOW CAUSE

To Vacate a Judgment For Failure

to Answer

Movant's address: 1468 BRYANT AVE, Apt. 4B BRONX, NY, 10460

State of New York, County of Bronx ss.:

LAURA MARRERO, being duly sworn, deposes and says:

- I am a defendant and I am making this request in support of the Order to Show
  Cause to vacate a default judgment, and dismiss this case for lack of personal
  jurisdiction pursuant to CPLR 5015(a)(4).
- The court lacks personal jurisdiction because the Summons and Complaint were not served properly. I WAS NOT SERVED I DID NOT RECIEVE ANY PAPER REGARDING THIS CASE AND I WAS BURNED OUT OF THIS RESIDENCE.
- Alternatively, the default judgment should be vacated pursuant to CPLR 5015(a)(1)
  and the case restored to the calendar and the attached Proposed Answer deemed
  timely filed.
- 4. I did not file an answer to the Complaint with the court because of the following excusable default:
  - a. I never received the court papers.
- 5. I have the following meritorious defense(s):
  - I do not owe the money.
  - b. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA

Affidavit in Support of an Order to Show Cause to Vacate a Default Judgment

Made using the NYS Courts FREE DIY Forms

Page 1 of 2

WHY I AM BEING SUED AND NEVER FOUND OUT ABOUT THIS UNTIL

I STARED BEING GARNISHED FROM MY PAY CHECK WHICH IS NOW

YEARS LATER AFTER LIVING THEIR.

- 6. I want to tell the judge the following: I DONT BELIEVE I OWE THIS DEBT ME AND MY FAMILY WERE BURBNED OUT OF THIS APARTMENT WE LOST EVERYTHING YEARS LATER I AM BEING SUED MOVEING FOWARD THIS GARNISHMENT HAS PUT A FINICHAL HARDSHIP ON ME AND MY FAMILY.
- 7. I have not asked for a previous Order to Show Cause in this case.
- 8. My salary has been garnished. I am employed at ALIIED BARTON SECURITY
  SERVICES LLC ATTN PAYROLL 161 WASHINGTON ST STE 600 8 TOWER
  BRDG CONSHOHOCKEN PA 19428.

#### Relief

9. WHEREFORE, I request that the judge vacate any judgment, lift any and all restraints and executions, order restitution, and upon vacatur, dismiss this case for lack of personal jurisdiction, or in the alternative, deem the attached Proposed Answer timely filed, restore the case to the calendar, grant me permission to serve these papers myself, and grant me such other and further relief as may be just.

Affidavit in Support of an Order to Show Cause to Vacate a Default Judgment Made using the NYS Courts FREE DIY Forms

Page 2 of 2

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX	Index No. cv10035008bx PROPOSED ANSWER CONSUMER			
Kelly street reality inc, Plaintiff,	CREDIT			
against	Movant's address: 1468 BRYANT AVE, Apt.			
LAURA MARRERO, Defendant.	4B BRONX, NY, 10460			

LAURA MARRERO, answers the Complaint as follows:

- 1. General Denial: I deny the allegations of the Complaint.
- 2. I do not owe the money.
- 3. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY
  UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA WHY I AM BEING
  SUED AND NEVER FOUND OUT ABOUT THIS UNTIL I STARED BEING
  GARNISHED FROM MY PAY CHECK WHICH IS NOW YEARS LATER AFTER
  LIVING THEIR.
- 4. I have the following counterclaim(s): I WANT WHAT WAS GARNISHED. I am seeking \$3,000.

Proposed Answer - Consumer Credit Transaction

Made using the NYS Courts FREE DIY Forms

Page 1 of 2

#### VERIFICATION

State of New York, County of Bronx ss.:

LAURA MARRERO, being duly sworn, deposes and says: I am the Defendant in this action, I have read the Proposed Answer Consumer Credit Transaction and know the contents to be true to my own knowledge, except for those matters alleged to be on information and belief, and as to those matters, I believe them to be true.

Laufa Marrero, Defendant

Sworn to before me this 5 day

Notary Public or Court Clerk

I.D. Presented Type: (\*\* DL. No I.D. Provided

## **EXHIBIT 2**

Case-1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 37 of 178 PageID #:

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX KELLY STREET REALTY, INC.,		Index No. 100350/08 File No. 4778
Plaint	iff,	<u>AFFIDAVIT</u>
-against-		
LAURA MARRERO,		
Defer	adant.	
STATE OF NEW YORK	) ) SS	
COUNTY OF BRONX	)	
I. Anto Lulaj, being	duly sworn deposes and say	<b>75</b> .

- 1. I am the agent for the Plaintiff, KELLY STREET REALTY, INC., herein and, as such, I am fully familiar with the facts and circumstances of this proceeding as I am responsible for, inter alia, leasing of apartments, and overseeing maintenance of the property when required.
  - 2. I was the agent during the time in issue of this proceeding.
- 3. The parties executed a lease agreement for the premises known as 928 Kelly Street, Unit 1, Bronx, New York, Plaintiff's building.
- 4. The term of the lease agreement was for two years commencing October 5, 2002 and ending October 14, 2004.
  - 5. Almost immediately thereafter, Defendant began to accumulate rental arrears.
- 6. As such, Plaintiff commenced a nonpayment proceeding in Housing Court under the L&T Index No. 2898/2012.
- 7. Defendant vacated the subject premises on or about October 31, 2014 leaving a substantial rental arrears balance.

- 8. As such, Defendant owes Plaintiff the sum of \$22,838.92 representing rental arrears for the May, 2003 balance of \$625.70 and for the months of June, 2003 through and including October, 2004 at the agreed monthly rent of \$1,306.66.
- My attorneys have advised me that judgment was entered against the Defendant and that we have been collecting on an income execution since December, 2012.

WHEREFORE, your deponent respectfully requests that the instant motion be granted in all respects and for such other and further relief as to this Court may seem just and proper.

Sworn

before me this

7th develof April, 2015

Novary Public

GARY KAVULICH
Notary Public, State of New York
No. 02KA6205615
Qualified in Westchester County
Commission Expires May 11, 2017

## **EXHIBIT 3**

Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 40 of 178 PageID #: 1391

CONSUMER CREDIT TRANSACTION, THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED TO COLLECT THIS DEBT. CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Kelly Street Realty, Inc.,

Plaintiff,

INDEX NO. FILE NO. 4778

-against-

SUMMONS

Place of Venue is Plaintiff's

place of business:

Laura Marrero.

PROCESSES SERVICES

928 Kelly Street Bronx, NY 10459

Defendant(s)

To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum of \$23,338.92 with interest thereon from May 1, 2003 together with costs of this action.

DATED: October 22, 2008

By: Gary Kavinch, Esq., Kavulich & Associates, P.C. Attorney for Plaintiff 30 Church Street Suite 26 New Rochelle, NY 10801 (914) 355-2074

Defendant's Address: Laura Marrero 2303 Belmont Avenue, Apr. 5 Bronx, NY 10458-8343

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

#### COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$22,838.92 representing rental arrears for the months of May, 2003 balance of \$625.70; June, 2003 through and including October, 2004 at the agreed monthly sum of \$1,306.66 for the premises known as 928 Kelly Street, Apt.#1 Bronx, NY 10459 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$0.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$22,838.92 plus interest from May 1, 2003 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of 0.000 plus interest from May 1, 2003 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

CIVIL CO	URT OF THE CITY OF NEW YORK	Index No. 100350/08 Filed:
COUNTY	OF BRONX	Filea:
Attorneys: Address:	Kavulich & Associates, P.C. 30 Church Street, Suite 26, New Rochelle, NY 10801	File No. 4778
	KELLY STREET REALTY INC.	
State of New	VS.  LAURA MARRERO.  Y York County of Nassau SS:	
Deponent is At: 2303 Be	ans II, being duly swom deposes and says: not a party herein, is over 18 years of age. On <u>November 8, 2008 of</u> Imont Avenue. Apt. 5, Bronx, NY 10458 served the within Summ I MARRERO. Defendant therin named	
Individual []	By delivering a true copy of each to said recipient; deponent kne served to be the person described as said person therein.	
Corporation	By delivering to and leaving with and that depr person so served and authorized to accept service on behalf of t	nent knew the he Corporation
Suitable Age Person []	By delivering a true copy of each to a person of suitable age and Said premises is recipients [ ] actual place of business [] dwelling state.	ng nouse
Affixing to Door [X]	By affixing a true copy of each to the door of said premises, whif [] actual place of business [X] dwelling house (place of abod	ch is recipients (e) within the state
Mail Copy [X] and discretion	On <u>November 10, 2008</u> deponent completed service under the ladepositing a copy of the Summons and Complaint to the above Class properly addressed envelope marked "Personal and Confidence for the exclusive care and custody of the United S of New York.  Deponent was unable, with due diligence to find the recipier having called thereat:	dential" in an official tates Post Office in the State
	On the $5^{th}$ day of November, 2008 at 9:45a.m. On the $7^{th}$ day of November, 2008 at 4:20p.m. On the $8^{th}$ day of November, 2008 at 6:41p.m.	
Description A	description of the Defendant, or other person served on behalt for of skin: Color of Hair: Age: Height:	Fof the Defendant Weight:
rxi	Deponent asked person spoken to whether the recipient was proservice of the United States Government or of the State of New informed that the recipient is not. Recipient wore civilian cloth	w York and was
Other	pe" neighbor stated that the Defendant is not in the military.	200
Sworn to the local	Aston LIC# 1	G. Evans II 220069
· ·	1.7.4	

# **EXHIBIT 4**

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Kelly Street Realty, Inc.,

Plaintiff.

Court Indox No. 100350/08 File Na. 4778.0

INCOME EXECUTION

Ageinst

Laura Marrero.

Defendant(s).

The People of the State of New York

\$88,318,67

The following judgment was duly entened in favor of the plaintiff (judgment creditor) in the office of the clerk of the within court:

Buley Date

Original Amount

Amount Duc

Plus Interest From

2/26/2009 12:00:00

CIVIL COURT OF THE CITY OF NEW YORK 2/26/2009 12:00:00 AM \$38,318.67

COUNTY OF BRONX

Laura Marrero

Bronz

defendant (judgment debter)

WHEREAS, this execution is issued against

Leure Makrezo

whose last known address is:

The judgment was recovered against

And transcripted with the county clerk(s) of

2303 Belmont Avenue

defendant (judgment debter)

Apl. 5 Bronz, NY 10458-8543 and said defendant (judgment debtor) is receiving or will receive from the Employer whose name and address is :
Allied Barton Security Services LLC 161 Washington Street, Sto. 600 8 Tower Bridge

Conshohocken, PA 19428 ATTN: Payroll

More than \$ Title or regition

per week, to wit \$

Soc. Sec. and rengion No.

to be paid weekly installment of S Bureau Office or Subdivision

Badbe

9875

You are directed to satisfy the judgment with interest together with your feet and expense, out of all monies now and hereafter due ording to the judgment debtor from the Europeyer pursuant to CPLE % 6231 d 15 U.S.C 1671, et. Seq. Direction to Judgment Debtor: You are notified and commanded within 20 dayto start paying to the Enforcement Officer serving a copy of this homme Execution on you; installments amounting to 160but no more than the Federal limits set firsth in I. Limitations on the amount that can be withheld, below) of any and all salary, wages or other income, including any and all overtime earnings, commissions or ther irregular compensation received or hereafter to be received from your Employer and to continue paying such installments until lincome Execution will be served upon the Employer by the Enforcement Officer.

Direction to the Employer: You are commanded to withheld any pay over to the Embrement Officer serving a copy of this Income Execution on you; installments amounting to 10% (but no more than the Federal Impits set fourth in I Limitations on the smooth that irregular compensation now or homester becoming due to judgment debtor until the judgment with interest and fees and expenses of this Income Execution are fully paid and satisfied.

Dated 9/28/2012

> Gary Kawalich Eaq. Kayelich & Associates, P.C. 181 Westchester Avenue, Suite 5000 Port Chester, NY 10573 (914) 355-2074

"Employer, " herein, includes any payor of money to Judgment Debtor.

#### Important Statement

This immuse execution directs the withholding of up to 10 percent of the judgment debtor's gross income. In certain cases, however, state or federal law does not permit the withholding of that which of the judgment debtor's gross income. The judgment debtor is referred to New York Civil Practice Law and Rules & 5231 and 15 United State Code & 1571 et seq.

L Limitation on the amount that can be withheld

A. An income execution for installments from a judgment debtor's gross income cannot exceed ten percent (10%) of the

# Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 45 of 178 PageID #:

₿.	If a judgment debtor' weakly disposable c (\$6.85 per hour), or \$175.5*	arnings are less than thirty (36) times the carrent federal minimum ways. No deduction can be unde from the judgment debler's cornings under
	this income econstina	

C. A judgment debtor's weekly disposable extraints cannot reduced below the amount arrived at by multiplying thirty (36) under this increase execution. per hour), or\$176.50\* time the current federal minimum wage(\$5.86"

D. If deductions are being made from a judgment debtor's carnings under any orders for alimony, support or meintenance for family members or former spouses, and those deductions equal or exceed twenty five percent(25%) of the judgment debtor's disposable curnings. no deduction can be made from the judgment debtor's earning under this income execution.

E, if deductions are being made from a judgment debtor's sarning under any urder for alimony, support or maintenance for family members or former spouses, and those deductions are less than twenty five percent(25%) of the judgment debtor's disposable earnings, deductions may be made from the judgment debtur's carnings under this income execution. However, the amount arrived at by adding rt or tb iga. - 104

the deductions from earnings made up maintenance for family members or fo	der this execution to rmer spouses caused	s the deductions <b>m</b> t exceed twenty fiv	e percent(25) c	ng under any orders for authory, suf I the judgment debtor's disposable es	taninë Port
NOTE: Nothing in this notice limit support or maintenance for family	its the proportion members or form	or amount, which	h may be ded	ucted under any order for alimon	у,
II. Explanation of Limitations Definitions					
The withheld (or drample, to	ming are thetenest of tree, Social security a	ne individuals co nd unemployment	internate, but	seducting those amounts that are requot disduction for union dues, insuran	uired ce
Gross Income: Gross income is salary trusts, before my deductions are ma:	, wages or other inco de from such income.	ma, including say :	and all overtime	earnings, commissions, and income f	auoi
Dinstrations regarding samings			•		
If disposable carnings is: (a) 30 times federal minimum wa is:	ıga	Amount to pay	oz deduct fro	n earning under this income execu	ttion
(\$175.50*) or leas		No раукеnt or		•	
(b) More than 30 times federal m Wage (\$175.50*) no 40 times federal minimum wa (\$284.00*)	od laga than	The less of the (\$175.56*	axcess over 30 in dispose	times the federal minimum wage this earnings, or 10% of gross earni	ngs.
(c) 40 times the federal minimum (\$284.00* ) or	wage more	The loss of 25%	é o disposable :	sarnings or 10% of gross carnings.	
III. Notice: You may be able to c CPLR% 5240	hallonge this incom	e execution throu	igh the proceeds	wes provided in CPLR% 5231 (i) an	đ
if you claim that the amount of your	income being daducte	d under this income	OTROCUTION HOUSE	ds the amount permitted by state or ds the amount permitted by state or OU MAY CONSULT AN ATTORNEY, rough which an impose execution can be	
CPLR % 5281 (i) Modification As income execution:	any time, the judg:	ment debter may :	make a motion	to a court for an order modifying an	
*Based upon \$4.25 minimum hourly Endorsement:	es executions. wage. Recalculate and	sion of enforcement ng, extending or mos l insert sourset figur	At any time, the lifting the use of us if the minimes	judgment dabtor may make a motion to any post-judgment enforcement a hourly wage changes.	•
Data and Time execution received	đ;				
Installments paid to		bave se	tished the judy	ment to the extent of \$	
trincipat and \$in	terest.				
Raturn to the judgment creditor of	Levyin his attornoy on	ng officer		County	
Find garnishes in the county.					
•	Levyis	ıg olficer		County	

Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 46 of 178 PageID #: CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34 INDEX NO. 100350/08 FILE NO. 4778 KELLY STREET REALTY, INC., Plaintiff, AFFIRMATION OF SERVICE -against-LAURA MARRERO, Defendant. Gary Kavulich, Esq., an attorney duly admitted to practice law before the courts of the State of New York hereby affirms the following under the penalty of perjury. On April 10, 2015, I served the within Affirmation in Opposition upon the movant in this action, by depositing a true copy in a post-paid envelope addressed to: Laura Marrero 1468 Bryant Ave., Apt. 4B Bronx, NY 10460 in an official depository under the exclusive dominion application of the United States Postal Service within the State of New York via regular first Gary Kavulich

Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 47 of 178 PageID #: 1398

INDEX NO. 100350/08	
CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX; PART 34	
KELLY STREET REALTY, INC.,	
Plaintiff,	
- against -	
LAURA MARRERO,	
Defendant.	
AFFIRMATION IN OPPOSITION	<del>(1)</del>
Signature Rule 130-1 1-a	

Kavulich & Associates, P.C. Attorneys for Plaintiff 181 Westchester Avc., Suite 500C Port Chester, NY 10573 (914) 355-2074

Print Name Beneath -

Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 48 of 178 PageID #: 1399

X
Index No. CV 100350-08
DECISION and ORDER
V
X
apers considered in the review of Plaintiff's motion
Numbered1

The Court, in its prior decision/order of May 8, 2015, granted defendant's motion to vacate a default judgment entered against her. The underlying case between the parties was a landlord-tenant matter and the motion was granted, in part, on the basis that the judgment was comprised, from monies owed by Section 8. Plaintiff here moves for relief arguing that the Court overlooked or misapprehended facts or misapplied controlling law, specifically CPLR §317.

A motion to reargue is addressed to the discretion of the trial court and is designed to afford a party opportunity to establish that the Court overlooked or misapprehended relevant facts or misapplied controlling principles of law in determining the prior motion. See *CPLR §2221(d)*. Here, the plaintiff argues that the Court failed to consider CPLR § 317 in determining the prior motion. Plaintiff avers that vacatur of the default judgment is precluded as the defendant failed to timely request relief in a period of two years after judgment elapsed before plaintiff moved the court.

As to the underlying motion to vacate the judgment, the unrepresented defendant moved the court pursuant to CPLR §5015 (a)(4), not CPLR § 317. While the court can consider a single motion

under both CPLR sections 317 and 5015, see Pena v Mittleman, 179 AD2d 607 (App Div, 1st Dept) (1992), here, the movant articulated the section under which relief was sought, (CPLR §5015 (a)(4)) and substantiated the basis for the motion. Plaintiff argues that meeting the strictures of CPLR § 317 is a prerequisite to relief being granted under CPLR§ 5015(a)(4). However, relief sought pursuant to CPLR§ 5015 (a)(4) has no time stated time limit and the request can be made at any time. See Caba v Rai, 63 AD3d 578 (App Div, 1st Dept) (2009) citing, Siegel Practice Commentaries, McKinney's Cons Laws Book 7B, CPLR §C5015:3, at 205-206.

Here, the Court found the defendant's assertions credible. Further, the allegations that the tenancy was subsidized by federal Section 8 rules and that there was a fire in the premises necessitating defendant's vacatur of the premises and subsequent relocation, constitute a sound basis upon which relief was granted. Again, it is well-settled that courts favor disposition on the merits.

Accordingly, the motion is denied and the May 8, 2015 order of the Court vacating the default judgment stands. As this matter was previously calendared for November 5, 2015, 9:30 K. VERSAA L. SAUNDERS A.M., all parties shall appear on that date.

This constitutes the decision and order of the Court,

Dated: Bronx, New York

October 14, 2015

Kauvalich & Associates, PC

By: Matthew Kasper, Esq.

Attorneys for Plaintiff

Laura Marrero

L. SAUNDERS, J.C.C

Respondent

Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 50 of 178 PageID #: CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34 \_\_\_\_X Index No. 100350/08 File No. 4778 KELLY STREET REALTY, INC., Plaintiff, ORDER TO SHOW CAUSE - against -LAURA MARRERO, Civil Court City of NY - Broam County Defendant. Court on the Return Calcudar Date and to ORDERS TO SHOW CASER UPON THE ANNEXED AFFIRMATION OF Matthew Kasper, Esq., sworn on June 2, 2015, and upon all prior papers and proceedings heretofore had herein, LET DEFENDANT AND/OR HER ATTORNEYS SHOW CAUSE before ME OR ONE OF THE Judges of this Court at Part 346, Room 504 in the Civil Court of the City of New York, County of Bronx, State of New York, located at 851 Grand Concourse, New York, on the 26th day of 5 at 9:30 am in the forenoon of that day or as soon thereafter as counsel can be heard why an Order should not be made persuant to CLPR 2221: 1. Granting reargument of Defendant's motion seeking vacatur of the instant judgment; 2. Amending Judge Saunders' Decision and Order dated May 12, 2015 to the extent that Defendant's motion is denied; 3. Alternatively, vacating Judge Saunders' Decision and Order dated May 12, 2015

and issuing a new Decision and Order denying Defendant's motion in its entirety.

LET all proceedings on the part of the Defendant, Defendant's attorney, agents.

successors and assignees be stayed.

1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 51 of 178 PageID #: 1402

NOW, SUFFICIENT CAUSE HAVING BEEN ALLEGED AND APPEARING

THEREFOR, let service of a copy of this Order, and the papers upon which it is based,

upon the Defendant at 1468 Bryant Ave., Apt. 4B, Bronx, New York 10460, by

Contified mail Return Paccept loques Took, on or before the 17th day of June, 2015, be

deemed service good and sufficient.

Dated: Bronx, New York
Sunce 9, 2015

JUN 0 9 2015

HON VERNA L. SAUNDERS

PROOF OF SERVICE SHALL BE FILED WITH THE CLERK OF CIVIL COURT, ON THE RETURN DATE.

INDEX NO: 100350/08

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF BRONX

KELLY STREET REALTY, INC.,

Plaintiff,

- against -

LAURA MARRERO,

Defendant.

ORDER TO SHOW CAUSE

Signature Rule 130-1.1-a

Print Name Beneath

Matthew Kasper, Esq.

Kavulich & Associates, P.C. Attorney for Plaintiff 181 Westchester Ave., Suite 500-C Port Chester, NY 10573 (914)355-2074

<del>Page 52-</del>

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34	Index No. 100350/08 File No. 4778	
KELLY STREET REALTY, INC.,	THE INC. TVV	
Plaintiff,	AFFIRMATION OF SERVICE	
- against -	6.7.1.2.2. X 1,	
LAURA MARRERO,		
Defendant.		

Matthew D. Kasper, Esq., an attorney duly admitted to practice law before the courts of the State of New York hereby affirms the following under the penalty of perjury.

On June 9, 2015 I served the within Order to Show Cause upon Laura Marrero the Defendant in this action by depositing a true copy in a post paid envelope addressed to:

Laura Marerro 1468 Bryant Ave., Apt. 4B Bronx, NY 10460

in a depository under the exclusive dominion and control of the United States Postal Service within the State of New York via certified mail, return receipt requested, referenced by the tracking number 917199793522867334.

Matthew D. Kasper, Esq.

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## **⊠USPS.COM**

## USPS Tracking™



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Tracking Number: 9171999991703522867334

Updated Delivery Day: Saturday, June 13, 2015

## **Product & Tracking Information**

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Juno 18, 2015 , 1:21 pm

STATUS OF ITEM

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June 13, 2015 , 3:24 pm	Recipient Available)	BRONX, NY 10460
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Arrived at USPS Facility

#### Available Actions

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Email Updates

## Track Another Package

Tracking (or receipt) number

June 11, 2015 , 4:24 pm

Track it

WHITE PLAINS, NY 10610

Manage Incoming Packages

Track all your packages from a dashboard. No tracking numbers necessary

Sign up for My USPS .



CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34	
KELLY STREET REALTY, INC.,	Index No. 100350/08 File No. 4778
Plaintiff	

- against -

LAURA MARRERO.

Defendant.

a to Mandatory in Special Torse, Civil Court City of MY - Bronz County for Linigants and Attorneys to APPEAR in Court on the Return Calendar Date to Respond to ORDERS TO MARCH CALES

ORDER TO SHOW CAUSE

UPON THE ANNEXED AFFIRMATION OF Matthew Kasper, Esq., sworn on June 2, 2015, and upon all prior papers and proceedings heretofore had herein,

LET DEFENDANT AND/OR HER ATTORNEYS SHOW CAUSE before ME OR ONE OF THE Judges of this Court at Part 34C, Room 504 in the Civil Court of the City of New York, County of Bronx, State of New York, located at 851 Grand Concourse, New York, on the 26th day of 5002, 2015 at 9:30 am in the forenoon of that day or as soon thereafter as counsel can be heard why an Order should not be made pursuant to CLPR 2221:

- Granting reargument of Defendant's motion seeking vacatur of the instant judgment;
- 2. Amending Judge Saunders' Decision and Order dated May 12, 2015 to the extent that Defendant's motion is denied;
- 3. Alternatively, vacating Judge Saunders' Decision and Order dated May 12, 2015 and issuing a new Decision and Order denying Defendant's motion in its entirety.

  LET all proceedings on the part of the Defendant, Defendant's attorney, agents, ...

  successors and assignees be staved.

Page 55

NOW, SUFFICIENT CAUSE HAVING BEEN ALLEGED AND APPEARING THEREFOR, let service of a copy of this Order, and the papers upon which it is based, upon the Defendant at 1468 Bryant Ave., Apt. 4B, Bronx, New York 10460, by

Centified mail Return Escarpt laquested, on or before the 17th day of June, 2015, be deemed service good and sufficient.

Dated: Bronx, New York

JUN 0 9 2015

HON. VERNA L. SAUNDERS

PROOF OF SERVICE SHALL BE FILED WITH THE CLERK OF CIVIL COURT, ON THE RETURN DATE.

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX	JNDEX NO. 100350/08 FILE NO. 4778	
KELLY STREET REALTY, INC.,		
Plaintiff,	AFFIRMATION IN SUPPORT OF ORDER TO SHOW CAUSE	
- against -		
LAURA MARRERO,		
Defendant.		

Matthew Kasper, Esq., an attorney duly admitted to practice law before the Courts of the State of New York hereby affirms the following under the penalty of perjury.

- 1. I am an associate of the law firm of Kavulich & Associates, P.C., attorneys for the Plaintiff, herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated to be based upon information and belief, and as to those matters I believe them to be true. The basis of my belief is information furnished to me by my client, information contained within the Court's file, and information contained within the file as maintained by your affirmant's office.
- 2. I make this affirmation which seeks an order granting reargument of Defendant's motion seeking vacatur of the instant judgment; amending Judge Saunders' Decision and Order dated May 12, 2015 to the extent that Defendant's motion is denied: alternatively, vacating Judge Saunders' Decision and Order dated May 12, 2015 and issuing a new Decision and Order denying Defendant's motion in its entirety. Annexed hereto as Exhibit "1" is a copy of this Court's Decision and Order at issue. Annexed hereto as Exhibit "2" is a copy of Defendant's motion and Plaintiff's opposition.

Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 58 of 178 PageID #: 1409

- 3. CPLR 2221(d) states that a motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion."
- 4. "A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law." Foley v. Roche, 68 A.D.2d 558, 567 (1st Dep't 1979); McGill v. Goldman, 261 A.D.2d 593 (2d Dep't 1999); Opton Handler Gottlieb Feiler Landau & Hirsch v. Patel, 203 A.D.2d 72 (1st Dep't 1994); Loris v. S&W Realty Corp., 16 A.D.3d 729, 730 (3d Dep't 2005) (noting that a motion for leave to reargue is left to the sound discretion of the court, and may be granted even when "the criteria for granting a reconsideration motion are not technically met").
- 5. Plaintiff respectfully raises issue as to the omission in Judge Saunders' Decision/Order dated May 7, 2015 of any discussion addressing Plaintiff's argument asserting that granting Defendant's motion would facially violate CPLR 317.
  - CPLR 317 states in relevant part as follows:

A person served with a summons other than by personal delivery to him or to his agent for service designated under rule 318, within or without the state, who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment ....

- Here, Plaintiff raised this argument in paragraph 17 of its affirmation in opposition.
- 8. Moreover, Plaintiff cited a New York City Civil Court case which is on all fours with the facts of the instant case illustrating the application of CPLR 317. See Elite

- 9. Simply stated, Defendant admitted knowing of the instant judgment for more than two years and failed to move to vacate the judgment, in fact she acquiesced in the existence of the judgment. (See Paragraphs 18-25 of Plaintiff's affirmation in opposition annexed hereto as Exhibit 2).
- Further, Defendant submitted no reply and offered no response to the
   Plaintiff's argument applying the one year limitation as set forth in CPLR 317.
- Respectfully, the applicability of CPLR 317 was not discussed or even mentioned in Judge Saunders' decision and order dated May 7, 2015.
- Stated another way, the existence and applicability of CPLR 317 precludes the
   CPLR 5051 (meritorious defense / excusable default) analysis.
- 13. The fact that Defendant may have an excusable default and a meritorious defense is immaterial if she failed to move within the CPLR 317 one year limitation.
- 14. Without any factual support or argument against the applicability of CPLR 317, this Court is powerless to vacate the judgment as it did in the aforementioned decision and order.
- 15. As such, allowing the decision and order at issue to remain in force and effect would be clear error.
- 16. Furthermore, Plaintiff has expended a substantial amount of time and money in overseeing and conducting the over two year collection effort which took place while Defendant hesitated and acquiesced in the existence of the judgment in clear violation of CPLR 317.

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- 17. Allowing the judgment to now be vacated would operate as prejudice to Plaintiff to the extent that the lengthy and costly lawful collection efforts expended by Plaintiff will all go to waste.
- 18. Therefore, this Court must grant Plaintiff's instant application and either (a) amend Judge Saunders' Decision and Order dated May 12, 2015 to the extent that Defendant's motion is denied; or (b) alternatively, vacate Judge Saunders' Decision and Order dated May 12, 2015 and issue a new Decision and Order denying Defendant's motion in its entirety on the basis that Defendant failed to move within one year of knowing of the existence of the judgment in accord with CPLR 317.
- 19. This is Plaintiff's first Order to Show Cause to reargue this Court's decision and order dated May 7, 2015.
- 20. This Order to Show Cause is timely as the underlying decision and order was entered on May 12, 2015 and a notice of entry was served on May 19, 2015 thereby allowing Plaintiff until June 18, 2015 to make the instant application. Annexed hereto as Exhibit "3" is a copy of the notice of entry.

WHEREFORE, your affirmant respectfully requests that the instant motion be granted in all respects and for such other and further relief as to this Court may seem just and proper.

Dated:

Port Chester, New York

June 2, 2015

Matthew Kasper, Esq.

# EXHIBIT 1

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Defendant(s)/Respondent(s)	
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## EXHIBIT 2

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COUNTY OF BRONX: PART 34	INDEX NO. 100350/08 FILE NO. 4778
KELLY STREET REALTY, INC.,	
Plaintiff,	AFFIRMATION IN
-against-	OPPOSITION
LAURA MARRERO,	
Defendant.	
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A A THE PARTY OF THE PROPERTY OF THE PARTY AND A STREET A

Matthew Kasper, Esq., an attorney duly admitted to practice law before the Court of the State of New York, hereby affirms under the penalty of perjury:

- 1. I am an associate of Kavulich & Associates, P.C., attorneys for the Plaintiff herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated upon information and belief, as to those matters I believe them to be true. The basis of my belief is information supplied to me by my client, information contained within the court file and information maintained within my office.
- 2. I make this affirmation in opposition to the Defendant VERONICA MORENO's Order to Show Cause which seeks to vacate the instant judgment issued on default. Please see Respondent's instant Order to Show Cause and Proposed Answer annexed hereto as Exhibit "I."

## STATEMENT OF THE UNDISPUTED FACTS

- 1. The parties executed a lease agreement for the premises known as 928 Kelly Street, Unit I, Bronx, New York, Plaintiff's building. Annexed hereto as Exhibit "2" is the affidavit of Anto Lulaj, agent of Plaintiff.
- 2. The term of the lease agreement was for two years commencing October 5, 2002 and ending October 14, 2004.

- 3. Almost immediately thereafter, Defendant began to accumulate rental arrears.
- As such, Plaintiff commenced a nonpayment proceeding in Housing Court under the L&T Index No. 2898/2012.
- 5. Defendant vacated the subject premises on or about October 31, 2014 leaving a substantial rental arrears balance.
- 3. As such, Defendant owes Plaintiff the sum of \$22,838.92 representing rental arrears for the May, 2003 balance of \$625.70 and for the months of June, 2003 through and including October, 2004 at the agreed monthly rent of \$1,306.66.
- 4. Defendant was served with a summons and complaint via conspicuous service on November 8, 2008. Annexed hereto as Exhibit "3" is a copy of the summons, complaint, and affidavit of service.
- 5. The Plaintiff had not been contacted by the Defendant since they vacated the subject-premises and until many years after she was notified by the wage garnishment that was issued by your affirmant's office. Annexed hereto as Exhibit "4" is a copy of the income execution.
  - 6. Defendant now moves to vacate the default judgment issued on February 26, 2009.

# THE DEFENDANT'S INSTANT MOTION DOES NOT DEMONSTRATE AN EXCUSABLE DEFAULT AND MERETORIOUS DEFENSE, THEREFORE THE MOTION SHOULD BE DENIED

- 7. In order to prevail on this instant motion, Defendant must prove both an excusable default and meritorious defense as upon showing of both of those prongs, vacating a default judgment is proper. CPLR 5051(a)(1); Bank of Am. v. Faracco, 89 AD3d 879 [2d Dep't 2011]; Community Preserve. Corp. v. Bridgewater condominiums. LLC., 89 AD3d 784 [2d Dep't 2011].
- 8. Moreover, should Defendant demonstrate a reasonable excuse for the default, a Court must nonetheless uphold the default judgment when the Respondent's papers submitted in support thereof are replete with self-serving, vague, unsubstantiated denials, and unsupported

legal conclusions. Thapt v. Lutheran Med. Ct., 89 AD3d 837 [2d Dep't 2011]; Garal Wholesalers, Ltd. v. Raven Brands, Inc., 82 AD3d 1041 [2d Dep't 2011].

- It is respectfully stated to the Court that Defendant has failed to demonstrate both prongs and that this motion must be denied.
- 10. Defendant alleges that she was not served with the summons and complaint, however she offers no support for this such as an explanation of where she was living at the time or a suggestion as to how process did not end up in her possession.
- 11. A process server's affidavit constitutes prima facie evidence of proper service pursuant to CPLR 308(4). City of New York v. Miller, 2010 NY Slip Op 03059 (2d Dep't 2010).
- 12. Defendant's self-serving and conclusory statements are insufficient to rebut the presumption of service.
  - 13. Morcover, Defendant alleges that she was "burned out of this residence."
- 14. Again, without support or even an iota of specificity as to when this purported fire took place, and what happened during the fire requiring Defendant's vacature.
- 15. In fact, Defendant vacated the apartment due to the commencement of a housing court case as a result of her failure to pay rent. Please see the aforementioned Exhibit "2."
- 16. Accordingly, Defendant fails to set forth a legally cognizable meritorious defense and reasonable excuse for her default.

### DEFENDANT IS CHARGED WITH NOTICE OF THE INSTANT LITIGATION SUCH THAT HER APPLICATION IS UNTIMELY AS A MATTER OF LAW

- 17. CPLR 317 requires an applicant seeking to vacate a default judgment to have an application within one year of knowing of the judgment.
- 18. A New York City Civil Court, in a case on point applying CPLR 317 and involving a judgment-debtor's Order to Show Cause pursuant to CPLR 5051 seeking vacatur of a default judgment after ignoring an income execution of twenty-months denied the judgment-debtor's

application. Elite Recovery Services, Inc. v. R. Howard Helrich, 31 Misc. 3d 1222, 930 N.Y.S.2d 174 (2011).

19. In denying the judgment-debtor's application for vacatur, the Court discussed its rationale as follows:

Defendant has not set forth any excuse as to why he ignored an income execution against his wages for twenty-months. The execution went into effect in June 2009 and defendant did not make this motion until February 2011. It is not credible that the defendant did not have either actual or constructive knowledge of the litigation as he had been having his wages garnished for over a year. As noted above, the policy of this court is to try to have all cases decided on the merits. However, the justice system assumes that people will act to challenge a judgment wrongfully entered against them within a reasonable amount of time after obtaining notice of it and that they will act in an expeditious manner to address such a situation. The actions of the defendant do not even approach "diligence" let alone "due diligence."

Id. at \*4.

- 20. Here, Defendant was served with an income execution on September 26, 2012.
- 21. As a result, her income was continuously gamished from December 5, 2012 (the first payment) through to the service of the instant Order to Show Cause on or about March 10, 2015 over two years.
- 22. In fact, Defendant states that she "never found out about this until I started being gamished from my pay check ...." Please see the aforementioned Exhibit "I." (emphasis added).
- 23. Defendant admits knowing about the garnishment the day it began, yet waited over two years to make the instant application which, as held in *Elite Recovery*, is not even close to due diligence as required by CPLR 317.
- 24. Therefore, even assuming arguendo that the Defendant offers an excusable default and meritorious defense, the Defendant's failure to address her default in almost 2 years combined

with her knowing disregard for the aforementioned execution measures should not be countenanced.

25. As such, Defendant's Order to Show Cause should be denied as untimely pursuant to CPLR 317.

WHEREFORE, as no legal or equitable basis has been stated or exists, Plaintiff respectfully asks that this Court deny the instant motion.

Dated: April 10, 2015 Port Chester, NY

> Kavwich & Associates, P.C. By: Matthew Kasper, Esq. Attorney for Plaintiff

181 Westchester, Ave., Suite 500C

Port Chester, NY 1057 (914) 355-2074

# EXHIBIT 1

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LAURA MARRERO	days or restore to the calender or allow a
TIPON the appeared affidavit of LAURA MARRERO, swo	m to on March 10, 2015, and upon all papers and proceedings
Let the Plaintiff(s) or Plaintiff(s) attorney(s) :	show cause at:
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851 Grand Concourse Bronx, NY 10451	3/23/15
Part 34C - Room 504	<i>// /</i>
on MACCH 23, 2015 at 9:30 AM or as soon thereafter as counsel may be heard, why an order	should not be made granting any of the following relief as the
court deems appropriate:	
Vacating the defendants default and any judgment, lifting t	estraints and executions, ordering restitution or dismissing or
staying the action for 90 days or restoring the action to the	calendar or allowing a proposed answer.
PENDING the hearing of this Order to Show Cause and th	e entry of an Order thereon, let all proceedings on the part of the
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SERVICE of a copy of this Order to Show Cause, and ann	exed Affidavit, upon the:
Plaintiff(s) or named attorney(s):	Sheriff or Marshal:
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Kavulich & Associates PC (Counsel for Pltf),	Marshal of the City of New York
181 Westchester Avenue, Suite 500C,	Biegel, Stephen, Marshal
Port Chester, NY 10573	109 W 38 Street Suite 200
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Kelly street reality Inc,
Plaintiff.

– against –

LAURA MARRERO,

Defendant.

Index No. cv10035008bx

AFFIDAVIT IN SUPPORT OF AN

ORDER TO SHOW CAUSE

To Vacate a Judgment For Fallure

to Answer

Movant's address: 1468 BRYANT AVE, Apt. 4B BRONX, NY, 10460

State of New York, County of Bronx ss.:

LAURA MARRERO, being duly swom, deposes and says:

- I am a defendant and I am making this request in support of the Order to Show
  Cause to vacate a default judgment, and dismiss this case for lack of personal
  jurisdiction pursuant to CPLR 5015(a)(4).
- 2. The court lacks personal jurisdiction because the Summons and Complaint were not served properly. I WAS NOT SERVED I DID NOT RECIEVE ANY PAPER REGARDING THIS CASE AND I WAS BURNED OUT OF THIS RESIDENCE.
- Atternatively, the default judgment should be vacated pursuant to CPLR 5015(a)(1)
  and the case restored to the calendar and the attached Proposed Answer deemed
  timely filed.
- 4. I did not file an answer to the Complaint with the court because of the following excusable default:
  - a. I never received the court papers.
- I have the following meritorious defense(s):
  - I do not owe the money.
  - b. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA

Affidavit in Support of an Order to Show Cause to Vacate a Default Judgment Made using the NYS Courts FREE DIY Forms

Page 1 of 2

WHY I AM BEING SUED AND NEVER FOUND OUT ABOUT THIS UNTIL

I STARED BEING GARNISHED FROM MY PAY CHECK WHICH IS NOW

YEARS LATER AFTER LIVING THEIR.

- 6. I want to tell the judge the following: I DONT BELIEVE I OWE THIS DEBT ME AND MY FAMILY WERE BURBNED OUT OF THIS APARTMENT WE LOST EVERYTHING YEARS LATER I AM BEING SUED MOVEING FOWARD THIS GARNISHMENT HAS PUT A FINICHAL HARDSHIP ON ME AND MY FAMILY.
- 7. I have not asked for a previous Order to Show Cause in this case.
- 8. My salary has been garnished. I am employed at ALRED BARTON SECURITY SERVICES LLC ATTN PAYROLL 161 WASHINGTON ST STE 600 8 TOWER BRDG CONSHOHOCKEN PA 19428.

#### Relief

9. WHEREFORE, I request that the judge vacate any judgment, lift any and all restraints and executions, order restitution, and upon vacatur, dismiss this case for lack of personal jurisdiction, or in the alternative, deem the attached Proposed Answer timely filed, restore the case to the calendar, grant me permission to serve these papers myself, and grant me such other and further relief as may be just.

Laura Marrero, Defendant

of MAR 1 0 2015

I.D. Presented Type:
No I.D. Provided

Affidavit in Support of an Order to Show Cause to Vacate a Default Judgment Made using the NYS Courts FREE DIY Forms

Page 2 of 2

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX	Index No. cv10035008bx		
Kelly street reality Inc. Plaintiff,	PROPOSED ANSWER CONSUMER CREDIT TRANSACTION		
against	Movent's address: 1468 BRYANT AVE, Apt.		
LAURA MARRERO, Defendant	48 BRONX, NY, 10460		

LAURA MARRERO, answers the Complaint as follows:

- 1. General Denial: I deny the allegations of the Complaint.
- 2. I do not owe the money.
- 3. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY
  UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA WHY I AM BEING
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  GARNISHED FROM MY PAY CHECK WHICH IS NOW YEARS LATER AFTER
  LIVING THEIR.
- I have the following counterclaim(s): I WANT WHAT WAS GARNISHED. I am seeking \$3,000.

Proposed Answer - Consumer Credit Transaction
Made using the NYS Courts FREE DIY Forms

Page 1 of 2

#### VERIFICATION

State of New York, County of Bronx ss.:

LAURA MARRERO, being duly sworn, deposes and says: I am the Defendant in this action, I have read the Proposed Answer Consumer Credit Transaction and know the contents to be true to my own knowledge, except for those matters alleged to be on information and belief, and as to those matters, I believe them to be true.

Laura Marrero, Defendant

of \_\_\_\_\_\_ day

Of \_\_\_\_\_\_ day

Notary Public or Court Clerk

I.D. Presented Type: /v\_501\_ No I.D. Provided

Proposed Answer - Consumer Credit Transaction

Made using the NYS Courts FREE DIY Forms

Page 2 of 2

CIVIL COURT OF THE CI COUNTY OF BRONX	Index No. 100350/08 File No. 4778		
KELLY STREET REALTY	, INC.,		
Plaint	iff,	<u>AFFIDAVIT</u>	
-against-			
LAURA MARRERO,			
Defen	dant.		
STATE OF NEW YORK	) )SS		
COUNTY OF BRONX	)		

- I, Anto Lulaj, being duly sworn deposes and says:
- 1. I am the agent for the Plaintiff, KELLY STREET REALTY, INC., herein and, as such, I am fully familiar with the facts and circumstances of this proceeding as I am responsible for, *inter alia*, leasing of apartments, and overseeing maintenance of the property when required.
  - I was the agent during the time in issue of this proceeding.
- The parties executed a lease agreement for the premises known as 928 Kelly Street, Unit 1, Bronx, New York, Plaintiff's building.
- 4. The term of the lease agreement was for two years commencing October 5, 2002 and ending October 14, 2004.
  - 5. Almost immediately thereafter, Defendant began to accumulate rental arrears.
- As such, Plaintiff commenced a nonpayment proceeding in Housing Court under the L&T Index No. 2898/2012.
- 7. Defendant vacated the subject premises on or about October 31, 2014 leaving a substantial rental arrears balance.

- 8. As such, Defendant owes Plaintiff the sum of \$22,838.92 representing rental arrears for the May, 2003 balance of \$625.70 and for the months of June, 2003 through and including October, 2004 at the agreed monthly rent of \$1,306.66.
- My attorneys have advised me that judgment was entered against the Defendant and that we have been collecting on an income execution since December, 2012.

WHEREFORE, your deponent respectfully requests that the instant motion be granted in all respects and for such other and further relief as to this Court may seem just and proper.

Sworn to before me this 7th de lof April, 2015

Anto Lulaj

Notar Phyblic

GARY KAVULICH
Notary Public, State of New York
No. 02KA8205815
Qualified in Westchester County
Commission Expires May 11, 2017

CONSUMER CREDIT TRANSACTION. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED TO COLLECT THIS DEBT. CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Kelly Street Realty, Inc.,

Plaintiff,

INDEX NO. FILE NO. 4778

-ngainst-

SUMMONS
Place of Venuc is Plaintiff's
place of business:

Laura Marrero,

928 Kelly Street Bronx, NY 10459

Defendant(s)

To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum of \$23,338.92 with interest thereon from May 1, 2003 together with costs of this gettern?

DATED: October 22, 2008

By: Gary Kaythich, Esq., Kayulich & Associates, P.C. Attorney for Plaintiff 30 Church Street Suite 26 New Rochelle, NY 10801 (914) 355-2074

Defendant's Address: Laura Marrero 2303 Belmont Avenue, Apt. 5 Bronx, NY 10458-8343

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

#### COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$22,838.92 representing rental arrears for the months of May, 2003 balance of \$625.70; June, 2003 through and including October, 2004 at the agreed monthly sum of \$1,306.66 for the premises known as 928 Kelly Street, Apt.#1 Bronx, NY 10459 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

<u>SECOND ACTION</u>: Plaintiff seeks to recover damages from the defendant in the sum of \$0.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$22,838.92 plus interest from May 1, 2003 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of 0.000 plus interest from May 1, 2003 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

# Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 83 of 178 PageID #: 1434

### AFFIDAVIT OF SERVICE

CIVIL COU	RT OF THE CITY OF N	EW YORK		Index No. 100350/08 Filed:
COUNTY	F BRONX			
Attorneys: K Address: 30	avulich & Associates, P.0 Church Street, Suite 20	5, New Rochelle, N		File No. 4778
	KE	LLY STREET REALT	Y INC.	
	L	vs. AUKA MARREKO,		
Aston G. Evan Deponent is n At: 2303 Belo	York County of Nassau SS: as II, being duly sworn depot of a party herein, is over 18 y nont Avenue, Apt 5, Bronz MARRERO, Defendant the	years of age. On <u>Nover</u> <u>NV 10458</u> served the	nher 8, 2008 at within Summo	6:41p.m. ns and Complaint
Individual S	By delivering a true copy of cryed to be the person descri			the person
Corporation [ ]	By delivering to and leaving person so served and author	with ized to accept service o	and that depone on belialf of the	nt knew the Corporation
Suitable Age Person	By delivering a true copy of Said premises is recipients   state.			
Affixing to Door [X]	By affixing a true copy of ea	ch to the door of said p [X] dwelling house (p	remises, which i lace of abode) v	vithin the state
Mail Copy [X]	On <u>November 10, 2008</u> depositing a copy of the Sun Class properly addressed endepository under the exclusion of New York.  Deponent was unable, wi	nmons and Complaint to velope marked "Persons ve care and custody of t	o the above addr id and Confident he United States	ess in a 1 <sup>st</sup> ial" in an official Post Office in the State
and discretion	having called thereat;		·	
	On the S <sup>th</sup> day of Novemb On the 7 <sup>th</sup> day of Novemb On the 8 <sup>th</sup> day of Novemb	ber, 2008 at 4:20p.m.		
Description [] Sex:C	A description of the Defendan color of skin:Color of Ha	it, or other person serve itr:Age:E	on behalf of the leight: We	r Defendant ght:
Office	Deponent usked person spok service of the United States informed that the recipient is	Government of of the St not. Recipient were civ	izits of New York ilian clothes and	cand was
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arvii.	COU	T OF	THE	CITY	OF:	NEW	YORK
COUN	TY OI	BRO	NX				

Kelly Street Resity, Inc.,

Court Index No. 100369/08 4778.0 Pile No.

Plaintiff.

INCOME EXECUTION

Laura Marcoro,

Defendant(s).

The People of the State of New York

The following judgment was duly entered in favor of the plaintiff (judgment creditor) in the office of the clerk of the within court

Court of Original Entry

Ratry Data

Original Assount

Amonot Due

Plus Interest Prem

CIVIL COURT OF THE CITY OF NEW YORK 2/26/2009 12:00:00 AM \$38,318.67

Against

\$39,318,67

2/26/2009 12/00/00

AM.

COUNTY OF BRONX

The judgment was recovered against And transcripted with the county clerk(s) of

Laura Marraro Bronz

defendant (judgment debter)

WHEREAS, this execution is issued against

Laura Makroro

defendant (judgment debter)

Whose last known address is:

2303 Belmont Avenue

Apt. 5 Broom, NY 10458-8343

and said defendant (judgment debtor) is receiving or will receive from the Employer" whose name and address is :

Allied Berton Security Services ILC 161 Washington Street, Ste. 600 8 Tower Bridge Coushchocken, PA 18428 ATTN: Payroll

More than \$ Title to minition

per week, to wit \$ Soc Sec. and/pension No. to be paid weakly installment of \$ Bucern Office or Substitution

Banke

9.875

You are directed to satisfy the judgment with interest together with your feet and amonae, out of all monies now and hereafter due owing to the judgment debtor from the Employer pursuant to CPLR % 5231 d 16 U.S.C. 1671, et. Seq. Direction to Judgment Debtor: You are notified and commanded 20 deyto start paying to the Enforcement Officer serving a copy of this lacence Execution on your installments amounting to 10 but no more than the Federal limits set forth in I. Limitations on the amount that can be withheld, below) of any and all salary, wages or other income, including any and all overtime caratings, commissions or other irregular compensation received or harafter to be received from your Employer and to continue paying such installments until the judgment with interest and the fees and expenses of this Income execution are fully paid and actisfied, and if you fail to do so this Income Execution will be served upon the Employer by the Enforcement Officer.

Direction to the Employer: You are unamounted to withheld and pay over to the Enforcement Officer serving a copy of this income Execution on you installments amounting to 10% (but no more than the Federal limits art fourth in I. Limitations on the amount that the southed, below) of any and all ealary, wages or other income, including any and all overtime earnings, commissions or other income Execution are fully paid and extended.

Income Execution are fully paid and entirhed.

Deted 0/26/2012

Gery Kavulich Eag. Keyulich & Amsociates, P.C. 181 Mestchester Avenue, Suite 5000 Port Chester, NY 10573 (914) 355-2074

"Employer, " herein, includes any payor of money to Judgment Debtor.

#### Important Statement

This moune execution directs the withholding of up to 10 percent of the judgment debtor's gross income. In certain cases, however, state or foderal law does not parmit the withholding of that much of the judgment debtor's gross income. The judgment debtor is referred to New York Civil Practice Law and Rules & 5231 and 15 United State Code % 1671 et seq.

I. Limitation on the amount that can be withheld

A. An income season for installments from a judgment debtor's grow income cannot exceed ten percent (10%) of the judgment debtor's gross increne.

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qequeç Menyer	appy park Tax or post	be made from U	e jugament geptona den runne connentum eta ma	rings under this it	come execution. Ho	support or maintenance for family judgment debter's disposable carnings never, the amount arrived at by addic notes any orders for alimony, support of judgment debter's disposable carning
NOT	E: Nothi	e in this notic		e or nenount, wh		d under any order for alimony,
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Hio	trations n	garding serning	4			
H d (a) S	ispensble Sensis 0	ederel minimu ederel minimu	co wage	Amount to p	ty or deduct from s	arring under this income execution
	\$175.50*	or less		No payment	or doducion allowe	di
1	Wasa (SI	contain terebel	) and less than	The less of ti (\$176.60*		nes the foderal minimum wage earnings, or 10% of gross carnings
(신 (선	(0 tímes 1 F234.00*	the federal min	imum wage ) or mora	The less of 2	5% o disposable sur	nings or 10% of gross carnings.
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COUNTY OF BRONX: PART 34	INDEX NO. 100350/08 FILE NO. 4778		
KELLY STREET REALTY, INC.,			
Plaintiff,	AFFIRMATION OF		
-against-	SERVICE		
LAURA MARRERO,			
Defendant.			

Gary Kavulich, Esq., an attorney duly admitted to practice law before the courts of the State of New York hereby affirms the following under the penalty of perjury.

On April 10, 2015, I served the within Affirmation in Opposition upon the movant in this action, by depositing a true copy in a post-paid envelope addressed to:

Laura Marrero 1468 Bryant Ave., Apt. 4B Bronx, NY 10460

in an official depository under the exclusive dominion and control of the United States Postal Service within the State of New York via regular first class paid

Gary Kavulich, Esq.

INDEX NO. 100350/08

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34

KELLY STREET REALTY, INC.,

Plaintiff,

- against -

LAURA MARRERO,

Defendant,

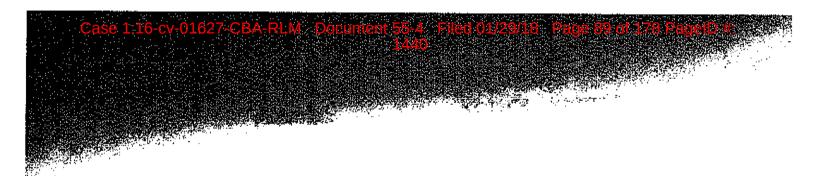
### AFFIRMATION IN OPPOSITION

Signature Rule 130-1.1-a

Print Name Beneath -

Matthew Kasper, Esq.

Kavulich & Associates, P.C. Attorneys for Plaintiff 181 Westchester Ave., Suite 500C Port Chester, NY 10573 (914) 355-2074



Civil Court of the City of New York County	Index Number: CV -1000350/08-BX
Kelly Street Reality Inc Plaintiff(s),	NOTICE OF ENTRY
-against-	
Lewww Marrero Defendant(s),-	
Please take notice that the within is a tr	ue copy of a(n)
	n the 12 day of May 2015
Dated: 5-19-2015	
	Signature: x James Marries.
	Address: 1468 Bryant author
-	Brook NEW YOR 10480.
Sworn to before me this $\frac{1}{2}$ day	
(Notary Public)	
CIV-GP-105(Revised 01/04) PAULINA B. R. NOTARY PUBLIC, State No. 04RE619 Qualified in Brond Commission Expires Se	ie ot New York 1996 x County //

INDEX NO: 100350/08	
CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX	
KELLY STREET REALTY, INC.,	·
Plaintiff, - against -	
LAURA MARRERO,	
Defendant.	
ORDER TO SHOW CAUS	SE
Signature Rule 130-1.1-a	4.4.4.4.4.4.4.4.4.4.4.4.4.4.4.4.4.4.4.4.
	Moneto
Print Name Beneath	Matthew Kasper, Esq.

Kavulich & Associates, P.C. Attorney for Plaintiff 181 Westchester Ave., Suite 500-C Port Chester, NY 10573 (914)355-2074

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Case 1:16-cv-01627-CBA-RLM Document 55-4	
CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34	
KELLY STREET REALTY, INC	X Index No. 100350/08 File No. 4778
Plaintiff.	ORDER TO SHOW CAUSE
- against -	OKOEK TO SHOW A
LAURA MARRERO,	
Delendant.	
-	
UPON THE ANNEXED AFFIRMATION	OF Matthew Kaspor, Esq., sworn
January 5, 2016, and upon all prior papers and pro-	occedings heretofore had herein,
LET DEFENDANT AND/OR HER ATTO	ORNEYS SHOW CAUSE before ME
OR ONE OF THE Judges of this Court at Part 3	, Ryom 503, in the Civil Court of
the City of New York. County of Bronx, State of I	Now York, located at 851 Grand
Concourse. New York, on the 4 day of Feld	20/6at 9:30 am in the forenoon of
that day or as soon thereafter as counsel can be hea	
pursuant to CLPR 2221:	
1. Granting reargument of Plaintiff's Order to	Show Cause dated June 2, 2015:
2. Amending Judge Saunders' Decision and C	Order dated October 14, 2015 to the
extent that Defendant's motion is denied;	
3. Alternatively, vacating Judge Saunders' De	cision and Order dated October 14.
2015 and issuing a new Decision and Order	
entirety.	
LET all proceedings on the part of the Defer	ndant, Defendant's attorney, agents.

successors and assignees be stayed.

# Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 93 of 178 PageID #: 1444

NOW, SUFFICIENT CAUSE HAVING BEEN ALLEGED AND APPEARING

THEREFOR, let service of a copy of this Order, and the papers upon which it is based.
upon the Defendant at 1468 Bryant Ave., Apt. 4B, Bronx, New York 10460, by
Certific Mad Return Recept Region or before the 21th day of Jan. 2016 be
deemed service good and sufficient.
Dated: Bronx, New York
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A. C.

CIVIL COURT OF THE CITY OF NEW YO	RK
COUNTY OF BRONX	
	/
KELLY STREET REALTY, INC.,	

INDEX NO. 100350/08 FILE NO. 4778

Plaintiff.

AFFIRMATION IN SUPPORT OF ORDER TO SHOW CAUSE

- against -

LAURA MARRERO.	
	Defendant.
~	

Matthew Kasper, Esq., an attorney duly admitted to practice law before the Courts of the State of New York hereby affirms the following under the penalty of perjury.

- I am an associate of the law firm of Kavulich & Associates, P.C., attorneys for the Plaintiff, herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated to be based upon information and belief, and as to those matters I believe them to be true. The basis of my belief is information furnished to me by my client, information contained within the Court's file, and information contained within the file as maintained by your affirmant's office.
- 2. I make this affirmation which seeks an order granting reargument of Plaintiff's order to show cause; amending Judge Saunders' Decision and Order dated October 14, 2015 to the extent that Defendant's motion is denied; alternatively, vacating Judge Saunders' Decision and Order dated October 14, 2015 and issuing a new Decision and Order denying Defendant's motion in its entirety. Amnexed hereto as Exhibit "1" is a copy of this Court's Decision and Order at issue. Annexed hereto as Exhibit "2" is a copy of Plaintiff's order to show cause.

- 3. On or about March 10, 2015, Defendant moved this court seeking vacatur of the instant judgment pursuant to CPLR 5015(a)(1) [meritorious defense / excusable default] or CPLR 5015(a)(4) [jurisdiction]. Annexed hereto as Exhibit "3" is a copy of Defendant's motion.
- 4. Plaintiff opposed this motion arguing that service was proper and that Defendant's prong of her motion based on CPLR 5015(a)(1) [meritorious defense? excusable default] was time limited because she failed to move within one year of being notified of the judgment. Annexed hereto as Exhibit "4" is a copy of Plaintiff's affirmation in opposition.
- 5. Nonetheless, on May 7, 2015, a decision was issued vacating the judgment based upon CPLR 5015(a)(1). "the court is satisfied that the defendant has come forward with an excusable default and meritorious defense to warrant granting the instant order to show cause." Annexed hereto as Exhibit "5" is a copy of the decision/order dated May 7, 2015 (see middle of "page 2 of 3").
- 6. The court vacated the judgment in violation of the CPLR 317 time limitation applicable to motion pursuant to CPLR 5015(a)(1):

A person served with a summons other than by personal delivery to him or to his agent for service designated under rule 318, within or without the state, who does not appear may be allowed to defend the action with one year after he obtains knowledge of entry of the judgment ...

CPLR 317.

7. Consequently, Plaintiff moved via an order to show cause to reargue the decision/order dated May 7, 2015 drawing the court's attention to this error. Please see the aforementioned Exhibit "1."

- 8. In response, the court issued its October 14, 2015 decision and order denying Plaintiff's order to show cause and allowing the prior May 7, 2015 decision/order vacating the judgment based upon CPLR5015(a)(1) to stand, but opining that CPLR 5015(a)(4) has no time limitation.
- 9. Respectfully, the court misapplied a controlling principle of law by vacating the judgment using a CPLR 5015(a)(1) [meritorious defense / reasonable excuse analysis] and circumventing the CPLR 317 one year limitation by opining that the judgment was vacated under CPLR 5015(a)(4) [jurisdictional analysis].
- 10. The October 14, 2015 decision and order is not only wrong, but it allows the original CPLR 5015(a)(1) order to stand which is in clear violation of the CPLR 317 one year limitation.
- This operates to prejudice Plaintiff because it has expended time and money in executing on the judgment over many years which is one of the hidden purposes of CPLR 317.
  - 12. Defendant knew of the judgment and simply failed to act on it in time.
- 13. Moreover, Plaintiff is prejudiced because if the judgment is vacated under CPLR 5015(a)(4) [jurisdiction analysis] it would entitle Plaintiff to a traverse hearing on the issue of service which was not ordered.
- 14. The court originally vacated the judgment based upon CPLR 5015(a)(1) [meritorious defense / reasonable excuse] in violation of the CPLR 317 one year limitation.
- 15. This decision must be vacated because Defendant failed to move within one year of knowing of the judgment.

- 16. The court did not apply the CPLR 5015(a)(4) [jurisdictional analysis], in fact, both decisions contain no facts or analysis on the issue of proper service and jurisdiction.
- 17. The Defendant was properly served creating a presumption of service, and the Defendant knew of the judgment for many years and chose not to act to the detriment of Plaintiff.
- 18. CPLR 2221(d) states that a motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion."
- 19. "A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law." *Foley v. Roche*, 68 A.D.2d 558, 567 (1" Dep't 1979); *McGill v. Goldman*, 261 A.D.2d 593 (2d Dep't 1999); *Opton Handler Gottlieb Feiter Landau & Hirsch v. Patel*, 203 A.D.2d 72 (1st Dep't 1994); *Lovis v. S&W Realty Corp.*, 16 A.D.3d 729, 730 (3d Dep't 2005) (noting that a motion for leave to reargue is left to the sound discretion of the court, and may be granted even when "the criteria for granting a reconsideration motion are not technically met").
- 20. As set forth above, the court misapplied a controlling principle of law, e.g. CPLR 5015(a)(1), CPLR 5015(a)(4), and CPLR 317.
- 21. As such, the court's decisions dated October 14, 2015 and May 7, 2015 must be vacated and the instant judgment reinstated in full force and effect.
  - 22. Plaintiff has made one prior order to show cause dated June 2, 2015.

23. The court issued a decision/order on October 14, 2015 and to date a notice of entry has not been served; as such, the instant application is timely.

WHEREFORE, your affirmant respectfully requests that the instant motion be granted in all respects and for such other and further relief as to this Court may seem just and proper.

Dated:

Port Chester, New York

January 5, 2016

Matthew Kasper, Esq.

Page 99

· EXHIBIT 2

EXHIBIT 3

EXHIBIT 4

CIVIL COURT OF THE CITY OF NEW	YORK
COUNTY OF BRONX: PART 34	
<del>*</del>	~0

Index No. 100350/08 File No. 4778

KELLY STREET REALTY, INC.,

Plaint IT.

ORDER TO SHOW CAUSE

- egainst -

LAURA MARRERO,

Defendant.

2 is Manufelopy in Special Terms.

Civil Court City of MY - Brown County
for 12th ante and Attorneys to APPEAR
in Court on the Return Calendar Date
to Respond to Offices TO State Cales

UPON THE ANNEXED AFFIRMATION OF Matthew Kasper, Esq., sworn on June 2, 2015, and upon all prior papers and proceedings heretofore had berein,

LET DEFENDANT AND/OR HER ATTORNEYS SHOW CAUSE before ME OR ONE OF THE Judges of this Court at Part 346, Room 504 in the Civil Court of the City of New York, County of Bronx, State of New York, located at 851 Grand Concourse, New York, on the 26<sup>th</sup> day of 5000 20/5 at 9:30 am in the foremon of that day or as soon thereafter as counsel can be heard why an Order should not be roade pursuant to CLPR 2221:

- Granting reargument of Defendant's motion seeking vacatur of the instant
  judgment;
- Amending Judge Saunders' Decision and Order dated May 12, 2015 to the extent that Defendant's motion is denied;
- Alternatively, vacating Judge Saunders' Decision and Order dated May 12, 2015
  and issuing a new Decision and Order denying Defendant's motion in its entirety.

  LET all proceedings on the part of the Defendant, Defendant's attorney, agents,

successors and assignees be stayed.

iled 01/29/18 Page 101 of 178 Pagell

### NOW, SUFFICIENT CAUSE HAVING BEEN ALLEGED AND APPEARING

THEREFOR, let service of a copy of this Order, and the papers upon which it is based, upon the Defendant at 1468 Bryant Ave., Apt. 4B, Bronx, New York 10460, by

Cartifical mail Botum Escarpt Engusted on or before the 17th day of I was 2015, be

deemed service good and sufficient,

Deted: Bronx, New York
Sulve 1, 2015

JUN 0 9 2015

HON VERNA L. SAUNDERS

PROOF OF SERVICE SHALL BE FILED WITH THE CLERK OF CIVIL COURT, ON THE RETURN DATE:

In a copository under the excusive dominion and control of the United States Postal Service within the State of New York via certified mail, return receipt requested, referenced by the tracking number 917199793522867334.

Matthew D. Kasper, Esq.

Case 1:16-cv-01627-CBA-RLM Document 55-4 Filed 01/29/18 Page 102 of 178 PageID #: 1453

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX
X
KELLY STREET REALTY, INC.,

INDEX NO. 100350/08 FILE NO. 4778

Plaintiff,

AFFIRMATION IN SUPPORT OF ORDER TO SHOW CAUSE

- against -

LAURA MARRERO,	
	Defendant.
	X

Matthew Kasper, Esq., an attorney duly admitted to practice law before the Courts of the State of New York hereby affirms the following under the penalty of perjury.

- I am an associate of the law firm of Kavulich & Associates, P.C., attorneys for the Plaintiff, herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated to be based upon information and belief, and as to those matters I believe them to be true. The basis of my belief is information furnished to me by my client, information contained within the Court's file, and information contained within the file as maintained by your affirmant's office.
- 2. I make this affirmation which seeks an order granting reargument of Defendant's motion seeking vacatur of the instant judgment; amending Judge Saunders' Decision and Order dated May 12, 2015 to the extent that Defendant's motion is denied; alternatively, vacating Judge Saunders' Decision and Order dated May 12, 2015 and issuing a new Decision and Order denying Defendant's motion in its entirety. Annexed hereto as Exhibit "1" is a copy of this Court's Decision and Order at issue. Annexed hereto as Exhibit "2" is a copy of Defendant's motion and Plaintiff's opposition.

<u>Page 102</u>

- 3. CPLR 2221(d) states that a motion to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion."
- "A motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principle of law." Foley v. Roche, 68

  A.D.2d 558, 567 (1st Dep't 1979); McGill v. Goldman, 261 A.D.2d 593 (2d Dep't 1999); Opton Handler Gottlieb Feiler Landau & Hirsch v. Patel, 203 A.D.2d 72 (1st Dep't 1994); Loris v. S&W Realty Corp., 16 A.D.3d 729, 730 (3d Dep't 2005) (noting that a motion for leave to reargue is left to the sound discretion of the court, and may be granted even when "the criteria for granting a reconsideration motion are not technically met").
- 5. Plaintiff respectfully raises issue as to the omission in Judge Saunders' Decision/Order dated May 7, 2015 of any discussion addressing Plaintiff's argument asserting that granting Defendant's motion would facially violate CPLR 317.
  - 6. CPLR 317 states in relevant part as follows:

A person served with a summons other than by personal delivery to him or to his agent for service designated under rule 318, within or without the state, who does not appear may be allowed to defend the action within one year after he obtains knowledge of entry of the judgment ....

- 7. Here, Plaintiff raised this argument in paragraph 17 of its affirmation in opposition.
- 8. Moreover, Plaintiff cited a New York City Civil Court case which is on all fours with the facts of the instant case illustrating the application of CPLR 317. See Elite

Recovery Services, Inc. v. R. Howard Helrich, 31 Misc. 3d 1222, 930 N.Y.S.2d 174 (2011).

- 9. Simply stated, Defendant admitted knowing of the instant judgment for more than two years and failed to move to vacate the judgment, in fact she acquiesced in the existence of the judgment. (See Paragraphs 18-25 of Plaintiff's affirmation in opposition annexed hereto as Exhibit 2).
- 10. Further, Defendant submitted no reply and offered no response to the Plaintiff's argument applying the one year limitation as set forth in CPLR 317.
- 11. Respectfully, the applicability of CPLR 317 was not discussed or even mentioned in Judge Saunders' decision and order dated May 7, 2015.
- 12. Stated another way, the existence and applicability of CPLR 317 precludes the CPLR 5051 (meritorious defense / excusable default) analysis.
- 13. The fact that Defendant may have an excusable default and a meritorious defense is immaterial if she failed to move within the CPLR 317 one year limitation.
- 14. Without any factual support or argument against the applicability of CPLR 317, this Court is powerless to vacate the judgment as it did in the aforementioned decision and order.
- 15. As such, allowing the decision and order at issue to remain in force and effect would be clear error.
- 16. Furthermore, Plaintiff has expended a substantial amount of time and money in overseeing and conducting the over two year collection effort which took place while Defendant hesitated and acquiesced in the existence of the judgment in clear violation of CPLR 317.

- 17. Allowing the judgment to now be vacated would operate as prejudice to Plaintiff to the extent that the lengthy and costly lawful collection efforts expended by Plaintiff will all go to waste.
- 18. Therefore, this Court must grant Plaintiff's instant application and either (a) amend Judge Saunders' Decision and Order dated May 12, 2015 to the extent that Defendant's motion is denied; or (b) alternatively, vacate Judge Saunders' Decision and Order dated May 12, 2015 and issue a new Decision and Order denying Defendant's motion in its entirety on the basis that Defendant failed to move within one year of knowing of the existence of the judgment in accord with CPLR 317.
- 19. This is Plaintiff's first Order to Show Cause to reargue this Court's decision and order dated May 7, 2015.
- 20. This Order to Show Cause is timely as the underlying decision and order was entered on May 12, 2015 and a notice of entry was served on May 19, 2015 thereby allowing Plaintiff until June 18, 2015 to make the instant application. Annexed hereto as Exhibit "3" is a copy of the notice of entry.

WHEREFORE, your affirmant respectfully requests that the instant motion be granted in all respects and for such other and further relief as to this Court may seem just and proper.

Dated:

Port Chester, New York

June 2, 2015

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Case 1:16-cv-01627-CBA-RLM Document	t 55-4 Filed 01/29/18 Page 109 of 178
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Defendant(s)/Respondent(s)	<i>,</i> .
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COUNTY OF BRONX: PAR	INDEX NO. 100350/08	
KELLY STREET REALTY, I		I Industry 1997
	± 10.,	
1	Plaintiff.	A STATE OF THE STA
-against-	<u>appermation in</u> <u>opposition</u>	
LAURA MARRERO,		
1	Defendant.	
## 1772 7 7 7 4 4	X	

Matthew Kasper, Esq., an atterney duly admitted to practice law before the Court of the State of New York, hereby affirms under the penalty of perjury:

- 1. I am an associate of Kavulich & Associates, P.C., attorneys for the Plaintiff herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated upon information and belief, as to those matters I believe them to be true. The basis of my belief is information supplied to me by my client, information contained within the court file and information maintained within my office.
- 2. I make this affirmation in opposition to the Defendant VERONICA MORENO's Order to Show Cause which seeks to vacate the instant judgment issued on default. Please see Respondent's instant Order to Show Cause and Proposed Answer amexed hereto as Exhibit "1."

### STATEMENT OF THE UNDISPUTED FACTS

- 1. The parties executed a lease agreement for the premises known as 928 Kelly Street, Unit 1, Bronx, New York, Plaintiff's building. Armexed hereto as Exhibit "2" is the affidavit of Anto Lulaj, agent of Plaintiff.
- 2. The term of the lease agreement was for two years commencing October 5, 2002 and ending October 14, 2004.

- 3. Almost immediately thereafter, Defendant began to accumulate rental arrears.
- 4. As such, Plaintiff commenced a nonpayment proceeding in Housing Court under the L&T Index No. 2898/2012.
- Defendant vacated the subject premises on or about October 31, 2014 leaving a substantial rental arrears balance.
- 3. As such, Defendant owes Plaintiff the sum of \$22,838,92 representing rental arrears for the May, 2003 balance of \$625.70 and for the months of June, 2003 through and including October, 2004 at the agreed monthly rent of \$1,306.66.
- 4. Defendant was served with a summons and complaint via conspicuous service on November 8, 2008. Annexed hereto as Exhibit "3" is a copy of the summons, complaint, and affidavit of service.
- 5. The Plaintiff had not been contacted by the Defendant since they vacated the subject-premises and until many years after she was notified by the wage garnishment that was issued by your affirmant's office. Annexed hereto as Exhibit "4" is a copy of the income execution.
  - 6. Defendant now moves to vacate the default judgment issued on February 26, 2009.

# THE DEFENDANT'S INSTANT MOTION DOES NOT DEMONSTRATE AN EXCUSABLE DEFAULT AND MERETORIOUS DEFENSE, THEREFORE THE MOTION SHOULD BE DENIED

- 7. In order to prevail on this instant motion, Defendant must prove both an excusable default and meritorious defense as upon showing of both of those prongs, vacating a default judgment is proper. CPLR 5051(a)(1); Bank of Am. v. Faracco, 89 AD3d 879 [2d Dep't 2011]; Community Preserve. Corp. v. Bridgewater condominiums, LLC., 89 AD3d 784 [2d Dep't 2011].
- 8. Moreover, should Defendant demonstrate a reasonable excuse for the default, a Court must nonetheless uphold the default judgment when the Respondent's papers submitted in support thereof are replete with self-serving, vague, unsubstantiated denials, and unsupported

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legal conclusions. Thapt v. Lutheran Med. Ct., 89 AD3d 837 [2d Dep't 2011]; Garal Wholesalers, Ltd. v. Raven Brands, Inc., 82 AD3d 1041 [2d Dep't 2011].

- It is respectfully stated to the Court that Defendant has failed to demonstrate both prongs and that this motion must be denied.
- 10. Defendant alteges that she was not served with the summons and complaint, however she offers no support for this such as an explanation of where she was living at the time or a suggestion as to how process did not end up in her possession.
- 11. A process server's affidavit constitutes prima facie evidence of proper service pursuant to CPLR 308(4). City of New York v. Miller, 2010 NY Slip Op 03059 (2d Dep't 2010).
- Defendant's self-serving and conclusory statements are insufficient to rebut the presumption of service.
  - 13. Moreover, Defendant alleges that she was "burned out of this residence."
- 14. Again, without support or even an iota of specificity as to when this purported fire took place, and what happened during the fire requiring Defendant's vacature.
- 15. In fact, Defendant vacated the apartment due to the commencement of a housing court case as a result of her failure to pay rent. Please see the aforementioned Exhibit "2."
- 16. Accordingly, Defendant fails to set forth a legally cognizable meritorious defense and reasonable excuse for her default.

### DEFENDANT IS CHARGED WITH NOTICE OF THE INSTANT LITIGATION SUCH THAT HER APPLICATION IS UNTIMELY AS A MATTER OF LAW

- 17. CPLR 317 requires an applicant seeking to vacate a default judgment to have an application within one year of knowing of the judgment.
- 18. A New York City Civil Court, in a case on point applying CPLR 317 and involving a judgment-debtor's Order to Show Cause pursuant to CPLR 5051 seeking vacatur of a default judgment after ignoring an income execution of twenty-months denied the judgment-debtor's

application. Elite Recovery Services, Inc. v. R. Howard Hebrich, 31 Misc. 3d 1222, 930 N.Y.S.2d 174 (2011).

19. In denying the judgment-debtor's application for vacatur, the Court discussed its rationale as follows:

Defendant has not set forth any excuse as to why he ignored an income execution against his wages for twenty-months. The execution went into effect in June 2009 and defendant did not make this motion until February 2011. It is not credible that the defendant did not have either actual or constructive knowledge of the litigation as he had been having his wages garnished for over a year. As noted above, the policy of this court is to try to have all cases decided on the merits. However, the justice system assumes that people will act to challenge a judgment wrongfully entered against them within a reasonable amount of time after obtaining notice of it and that they will act in an expeditious manner to address such a situation. The actions of the defendant do not even approach "diligence" let alone "due diligence."

Id. at \*4.

- 20. Here, Defendant was served with an income execution on September 26, 2012.
- 21. As a result, her income was continuously gamished from December 5, 2012 (the first payment) through to the service of the instant Order to Show Cause on or about March 10, 2015 over two years.
- 22. In fact, Defendant states that she "never found out about this until I started being gamished from my pay check ...." Please see the aforementioned Exhibit "I." (emphasis added).
- 23. Defendent admits knowing about the garnishment the day it began, yet waited over two years to make the instant application which, as held in *Elite Recovery*, is not even close to due diligence as required by CPLR 317.
- 24. Therefore, even assuming arguendo that the Defendant offers an excusable default and meritorious defense, the Defendant's failure to address her default in almost 2 years combined

Page 114

with her knowing disregard for the aforementioned execution measures should not be countenanced.

25. As such, Defendant's Order to Show Cause should be denied as untimely pursuant to CPLR 317.

WHEREFORE, as no logal or equitable basis has been stated or exists, Plaintiff respectfully asks that this Court deny the instant motion.

Dated: April 10, 2015 Port Chester, NY

> Kavutich & Associates, F.C. By: Matthew Kasper, Esc. Attorney for Plaintiff

181 Westchester, Ave., Suite 500C

Port Chester, NY 1057

(914) 355-2074

EXHIBIT 1

DEV Index Number: CV-100350-08/BX Civil Court of the City of New York County of Brank ORDER TO SHOW CAUSE HELLY STREET REALTY INC. To yacate the defendants default, and any -againstjudgment, lift restraints and executions, order LAURA MARRERO restitution and dismiss or stay the action for 50 days or restore to the calender or allow a proposed answer UPON the annexed situativit of LAURA MARRERO, swem to on March 10, 2015, and upon all papers and proceedings Jacon bert. Let the Plaintiff(s) or Plaintiff(s) attorney(s) show cause at: Bruay Civil Court 851 Grand Concourse Broax, NY 10451 Part 34C - Room 504 OH MARCH 2-3, 2013 at 9:38 AM or as soon thereafter as counsel may be heard, why an order should not be made granting any of the following relief to the coun écoms appropriate; Vacating the defendants default and any judgment, lifting restraints and excentions, ordering rentitation or dismission or staying the action for 90 days or restoring the action to the calendar or allowing a proposed answer. PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Plaintiff(s), Plaintiff(s) anomey(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement or ha Judgment be stayed, SERVICE of a copy of this Order to Show Cause, and unnexed Affidavit, upon the: Plaintiff(s) or named autoracy(s): Sheriff or Murshal: (Judge to initial) (Jodga to Initial) by Personal Service by "In Hand Delivery" by Personal Service by " In Hand Delivery" by Certified Mail, Return Receipt Requested by Certified Mail, Return Receipt Requested \_by First Class Mail with official Post Office by First Class Mail with official Post Office Certificate of Mailing Certificate of Mailing on or before March , shall be deemed good and sufficient PROME OF SUCH SERVICE may be filed with the Clerk in the Part indicated always on the return dute of this Order to Show Cause. Mail to Attorney or party: Sheriff/Marshalt Kavelich & Associates PC (Counsel for Phf), Marshal of the City of New York 181 Westenester Avenue, Suite 500C,

Port Chester, NY 10573

DATE

March 10, 2015

Coff Call Lags CAAC Hon. Verna Salanden BON.

Biegel, Stephen, Marshal

New York, NY 10018-3615

109 W 38 Street Sulle 200

Page 117

CIVIL COURT OF	THE CITY	OF	NEW	YORK
COUNTY OF BRO	NX	-		10111

Kelly street reality Inc.
Plaintit.

- against -

LAURA MARRERO,

Defendant.

Index No. cv10035008bx

AFFIDAVIT IN SUPPORT OF AN

ORDER TO SHOW CAUSE

To Vacate a Judgment For Failure
to Answer

Movent's address: 1468 BRYANT AVE, Apt. 4B BRONX, NY, 10460

State of New York, County of Bronx ss.:

LAURA MARRERO, being duly swom, deposes and says:

- t am a defendant and t am making this request in support of the Order to Show Cause to vacate a default judgment, and dismiss this case for tack of personal jurisdiction pursuant to CPLR 5015(a)(4).
- The court tacks personal jurisdiction because the Summons and Complaint were not served properly. I WAS NOT SERVED I DID NOT RECIEVE ANY PAPER REGARDING THIS CASE AND I WAS BURNED OUT OF THIS RESIDENCE.
- Alternatively, the default judgment should be vacated pursuant to CPLR 5D15(a)(1)
  and the case restored to the calendar and the attached Proposed Answer deemed
  timely filed.
- 4. I did not file an answer to the Complaint with the court because of the following excusable default:
  - I never received the court papers.
- I have the following meritorious defense(s):
  - I do not owe the money.
  - b. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA

Affidavit in Support of an Order to Show Cause to Vacate a Default Judgment Made using the NYS Courts FREE DIY Forms

Page 1 of 2

WHY I AM BEING SUED AND NEVER FOUND OUT ABOUT THIS UNTIL I STARED BEING GARNISHED FROM MY PAY CHECK WHICH IS NOW YEARS LATER AFTER LIVING THEIR.

- 6. I want to tell the judge the following: I DONT BELIEVE I OWE THIS DEBT ME AND MY FAMILY WERE BURBNED OUT OF THIS APARTMENT WE LOST EVERYTHING YEARS LATER I AM BEING SUED MOVEING FOWARD THIS GARNISHMENT HAS PUT A FINICHAL HARDSHIP ON ME AND MY FAMILY.
- 7. I have not asked for a previous Order to Show Cause in this case.
- 8. My salary has been garnished. I am employed at ALIIED BARTON SECURITY
  SERVICES LLC ATTN PAYROLL 161 WASHINGTON ST STE 600 8 TOWER
  BRDG CONSHOHOCKEN PA 19428.

### Reflef

9. WHEREFORE, I request that the judge vacate any judgment, lift any and all restraints and executions, order restitution, and upon vacatur, dismiss this case for lack of personal jurisdiction, or in the alternative, deem the attached Proposed Answer timely filed, restore the case to the calendar, grant me permission to serve these papers myself, and grant me such other and further relief as may be just.

Laura Marrero, Defendant

of MAR 1 0 2015

Mary Public or Court Clerk

I.D. Presented Type: PVX DZ No LD. Provided

Affidavit in Support of an Order to Show Cause to Vacate a Default Judgment
Made using the NYS Courts FRSE DIY Forms

Page 2 of 2

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CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Kolly street reality Inc.
Plaintiff,

Index No. cv10035008bx PROPOSED ANSWER CONSUMER CREDIT TRANSACTION

— against –

LAURA MARRERO,

Defendent.

Movani's address: 1468 BRYANT AVE, Apt. 46 BRONX, NY, 10460

LAURA MARRERO, answers the Complaint as follows:

- 1. General Denial: I deny the allegations of the Complaint-
- 2. I do not owe the money.
- 3. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY
  UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA WHY I AM BEING
  SUED AND NEVER FOUND OUT ABOUT THIS UNTIL I STARED BEING
  GARNISHED FROM MY PAY CHECK WHICH IS NOW YEARS LATER AFTER
  LIVING THEIR.
- I have the following counterclaim(s): †WANT WHAT WAS GARNISHED. †am. seeking \$3,000.

Proposed Answer – Consumer Credit Transaction

Made using the NYS Courts FREE DIY Forms

Page 1 of 2

### VERIFICATION

State of New York, County of Bronk se.:

LAURA MARRERO, being duly sworn, deposes and says: I am the Defendant in this action, I have read the Proposed Answer Consumer Credit Transaction and know the contents to be true to my own knowledge, except for those matters alleged to be on information and belief, and as to those matters, I bullqvg them to be true.

Human Mannor.
Laufa Marrero, Defendant

I.D. Presented Type: / 150 L. No I.D. Provided

Proposed Answer - Consumer Credit Transaction
Made using the NYS Courts FREE biy Forms

Page 2 of ≥

# EXHIBIT 2

CIVIL COURT OF THE CITY OF NEW YORK	
COUNTY OF BRONX	

Index No. 100350/08 File No. 4778

KELLY STREET REALTY, INC.,

Plaintiff.

AFFIDA<u>VIT</u>

-against-

LAURA MARRERO.

Defe	ndant.
STATE OF NEW YORK	)
COUNTY OF BRONX	) \$\$ )

- L Auto Lulaj, being duly sworn deposes and says:
- I. I am the agent for the Plaintiff, KELLY STREET REALTY, INC., herein and, as such, I am fully familiar with the facts and circumstances of this proceeding as I am responsible for, inter alia, leasing of apartments, and oversceing maintenance of the property when required.
  - 2. I was the agent during the time in issue of this proceeding.
- The parties executed a lease agreement for the premises known as 928 Kelly Street, Unit 1, Bronx, New York, Plaintiff's building.
- The term of the lease agreement was for two years commencing October 5, 2002
   and ending October 14, 2004.
  - 5. Almost immediately thereafter, Defendant began to accumulate rental arrears.
- As such, Plaintiff commenced a nonpayment proceeding in Housing Court under the L&T Index No. 2898/2012.
- 7. Defendant vacated the subject premises on or about October 31, 2014 leaving a substantial rental arrears balance.

- 8. As such, Defendant owes Plaintiff the sum of \$22,838.92 representing rental arrears for the May, 2003 balance of \$625.70 and for the months of June, 2003 through and including October, 2004 at the agreed monthly rent of \$1,306.66.
- My attorneys have advised me that judgment was entered against the Defendant and that we have been collecting on an income execution since December, 2012.

WHEREFORE, your deponent respectfully requests that the instant motion be granted in all respects and for such other and further relief as to this Court may seem just and proper.

Sworn before me this 7th devot April, 2015

Ar

GARY KAVULICH
Notary Public, State of New York
No. 02KA5205615
Qualified in Westchester County
Commission Expires May 11, 2017

# EXHIBIT 3

CONSUMER CREDIT TRANSACTION. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED TO COLLECT THIS DEBT. CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Kelly Street Realty, Inc.,

Plaintiff.

INDEX NO. FILE NO. 4778

-ngainst-

SUMMONS

Place of Venue is Plaintiff's

place of business:

Laura Mairero.

928 Kelly Street Bronx, NY 10459

Defendant(s)

To the above named defendents(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an enswer to the below complaint with the clerk: open your failure to answer, judgment will be taken against you for the sum of 523,338.92 with interest thereon from May 1, 2003 together with costs of this setting

DATED: October 22, 2008

By: Gary Kaynerch, Esq., Kayclich & Associates, P.C. Attemey for Plaintiff 30 Church Street

Suite 26

New Rochelle, NY 10801

(914) 355-2074

Defendant's Address: Laura Marrero 2303 Belmont Avenue, Apr. 5 Bronx, NY 10458-8343

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and enswer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

### COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$22,838.92 representing rental arrears for the months of May, 2003 balance of \$625.70; June, 2003 through and including October, 2004 at the agreed monthly sum of \$1,306.66 for the premises known as 928 Kelly Street, Apt.#1 Bronx, NY 10459 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$0.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$22,833.92 plus interest from May 1, 2003 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of 0.000 plus interest from May 1, 2003 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

	AFFIDAVIT OF SERVICE	
CIVIL CO	URT OF THE CITY OF NEW YORK	Index No. 100350/08
COONTY	OF BRONX	Filed:
Attornevs:	Kayutich & Associates, P.C.	
Address:	10 Church Street, Suite 26, New Rochelle, NY 10801	File No. 4778
	KELLY STREET REALTY INC,	
	VS.	
	LAURA MARRERO.	
State of New	Y York County of Nasseu SS:	·
Deponent is	<u>ans (),</u> being duly swom deposes and says: not a party herein, is over (\$ years of age, On <u>November \$, 2008</u> a	e (6 <b>41</b> 0.m.
At: <u>2303</u> Re	intent Ayenue, Apt. 5, Bronx, NY 10458 served the within Summer NARRERO. Defendant therin named	ons and Complaint
individual ()	By delivering a true copy of each to said recipient deponent knew served to be the person described as said person therefor.	r the person
Corporation [ ]	By delivering to and leaving with and that deport person so served and authorized to accept service on behalf of the	ient know the c Corporation
Suitable Age Person []	By delivering a true copy of each to a person of suitable age and a flaid premises is recipients [ ] actual place of business (] dwelling state.	discretion , house within the
Affixing to Door [X]	By affixing a true copy of each to the door of said premises, which [ ] actual place of business [X] dwelling bouse (place of abode)	is recipients : within the state :
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	On the $S^b$ day of November, 2008 at 9:45a,m. On the $T^b$ day of November, 2008 at 4:20p,m. On the $S^b$ day of November, 2008 at 6:41p,m.	
Description // () Sex:Ca	A description of the Defendant, or other person served on behalf of the clor of Skin:Color of Skin:Age;tfeight We	in Defendant sight:
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# EXHIBIT 4

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COUNTY OF BROWN	TE CITA OR NEW AORK
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Court Indar No. 100350/00 4778.0 Pile No.

Pinistiff.

INCOME EXECUTION

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Application of the State Control of the Control of

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Laura Martine,

Defendant(a).

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Court of Original Prize

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COUNTY OF BROWN

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USUS Hobsont Avenue

Apt. 6. Bross, NY 10468-8845

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After Partin Security Services LLC 161 Washington Street, Sin. 600 S Tower Hydro-Complication, PA 19423. ATTN 1 systall.

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Duted 9/26/2012

Gary Kavelich Edg. Kavelich & Resochabes, P.C. 101 Westchester Avenue, Suite Scot Port Chester, NY 10273 (924) 355-2674

"Employer, " turnin, includes any payor of money to Judgment Debtor.

### Important Statement

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Limitation on the amount that can be withheld Į.

An income execution for installments from a judgment debtor's grown income cannot exceed ton persons (1974) of the judgment debtor's press income.

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COUNTY OF BRONX: PART		INDEX NO. 100350/08 FILE NO. 4778
KELLY STREET REALTY, I	NC.,	
F	Plaintiff	<u>AFFIRMATION OF</u>
-against-		SERVICE
LAURA MARRERO,		
r	Defendant.	

Gary Kavulich, Esq., an attorney duly admitted to practice law before the courts of the State of New York hereby affirms the following under the penalty of perjury.

On April 10, 2015, I served the within Affirmation in Opposition upon the movent in this action, by depositing a true copy in a post-paid envelope addressed to:

Laura Marrero 1468 Bryant Ave., Apt. 4B Bronx, NY 10460

in an official depository under the exclusive dominion and control af the United States Postal Service within the State of New York via regular first class wail

Gary Kavulich, Esq.

INDEX NO. 100350/08

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34

KELLY STREET REALTY, INC.,

Plaintiff,

- against -

LAURA MARRERO,

Defendant.

AFFIRMATION IN OPPOSITION

Signature Rule 130-1.1-a

Print Name Beneath -

Marthew Kasper, Esq.

Kavulich & Associates, P.C. Attorneys for Plaintiff 181 Westchester Ave., Suite 500C Port Chester, NY 10573 (914) 355-2074



Civil Court of the City of New York County	Index Number CV - 1000350/08-3x
Kelly Street Reality Inc	
Pluistiff(s),	NOTICE OF ENTRY
-against-	
Latter Mex 12 Personal and (s) -	
Ficase take notice that the within is a tr	us copy of a(n)
(chaose one) the City of New York, County of New York, or	n the 1.2 day of May , 20 15
Dated: <u> </u>	Signaturo: x Jama Many
	Print Name: 1940 March 19
•	Address: 1488 Boyant avatigo
	Bont Armyor 10480.
Sworn to before me this 19 day	

CTV-OP-105(Revised 01/04)

(Notary Public)

PAULINA S. REYES
NOTARY PUBLIC, State of New York
No. 04R2619398
Qualified in Bronx County
Commission Expires Sept. 18, 20

INDEX NO: 100350/08

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

KELLY STREET REALTY, INC.,

Plaintiff,

- against -

LAURA MARRERO,

Defendant.

### ORDER TO SHOW CAUSE

Signature Rule 130-1.1-a

Print Name Beneath

Matthew Kasper, Esq.

Kavulich & Associates, P.C. Attorney for Plaintiff 181 Westchester Ave., Suite 500-C Port Chester, NY 10573 (914)355-2074

## **EXHIBIT 2**

€IVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX : PART 34	
KELLY STREET REALTY, INC., Plaintiff,	X Index No. CV 100350-08
-against-	DECISION and ORDER
LAURA MARRERO,	
Defendante	v
HON, VERNA L. SAUNDERS, J.C.C.:	~ <b>~</b>
Recitation, as required by CPLR 2219(a), of the pate to reargue.	apers considered in the review of Plaintiff's

Papers Order to Show Cause

The Court, in its prior decision/order of May 8, 2015, granted defendant's motion to vacate a default judgment entered against her. The underlying case between the parties was a landlord-tenant matter and the motion was granted, in part, on the basis that the judgment was comprised, from monies owed by Section 8. Plaintiff here moves for relief arguing that the Court overlooked or misapprehended facts or misapplied controlling law, specifically CPLR §317.

A motion to reargue is addressed to the discretion of the trial court and is designed to afford a party opportunity to establish that the Court overlooked or misapprehended relevant facts or misapplied controlling principles of law in determining the prior motion. See *CPLR §2321(d)*. Here, the plaintiff argues that the Court failed to consider CPLR § 317 in determining the prior motion. Plaintiff avers that vacatur of the default judgment is precluded as the defendant failed to timely request relief inasmuch as a period of two years after judgment elapsed before plaintiff moved the court.

As to the underlying motion to vacate the judgment, the unrepresented defendant moved the court pursuant to CPLR §5015 (a)(4), not CPLR § 317. While the court can consider a single motion

motion

Numbered

under both CPLR sections 317 and 5015, see *Pena v Mittleman*, 179 AD2d 607 (App Div, 1<sup>st</sup> Dept) (1992), here, the movant articulated the section under which relief was sought, (CPLR §5015 (a)(4)) and substantiated the basis for the motion. Plaintiff argues that meeting the strictures of CPLR § 317 is a prerequisite to relief being granted under CPLR§ 5015(a)(4). However, relief sought pursuant to CPLR§ 5015 (a)(4) has no time stated time limit and the request can be made at any time. See Caba v Rai, 63 AD3d 578 (App Div, 1<sup>st</sup> Dept) (2009) citing, Siegel Practice Commentaries, McKinney's Cons Laws Book 7B, CPLR §C5015:3, at 205-206.

Here, the Court found the defendant's assertions credible. Further, the allegations that the tenancy was subsidized by federal Section 8 rules and that there was a fire in the premises necessitating defendant's vacatur of the premises and subsequent relocation, constitute a sound basis upon which relief was granted. Again, it is well-settled that courts favor disposition on the merits.

Accordingly, the motion is denied and the May 8, 2015 order of the Court vacating the default judgment stands. As this matter was previously calendared for November 5, 2015, 9:30 A.M., all parties shall appear on that date.

This constitutes the decision and order of the Court,

Dated: Bronx, New York

October 14, 2015

Kauvalich & Associates, PC

By: Matthew Kasper, Esq.

Attorneys for Plaintiff

Laura Marrero

VERMA L. SAUNDERS, J.C.C

Respondent

# **EXHIBIT 3**

Page 140

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	Index Number: CV-100350-08/BX
Civil Court of the City of New York County of Bronx	#F [ ] { # 33 f } { [ ]   { # 4 f } ] } { # 4 f } } [ F # 7 f ] # 5 f # 5 f # 5 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f # 7 f #
KELLY STREET PEALTY INC.	
-against- LAURA MARRERO	To vacate the defendants default, and any judgment, lift restraints and executions, order restitution and dismiss or stay the action for 50 days or restore to the calender or allow a proposed answer
UPON the annexed allidavit of LAURA MARRERO, in herein:	voru to on March 10, 2015, and upon all papers and proceedlings
Let the Plaintiff(s) or Plaintiff(s) attorney(s Bronx Civil Court 851 Grand Concourse Bronx, NY 10451 Part 34C - Room 504 on MACH 23, 2013 at 9:30 AM or as soon themsafter as counsel may be heard, why an on	) show cause in:  3/23/15  ter should not be made granting any of the following relief to the
court deems appropriate;	
Vacating the defendants default and any judgment, lifting	restraints and executions, ordering restriction or dismissing or
staying the action for 90 days or restoring the action to th	s calcudar or allowing a proposed answer.
PENDING the hearing of this Order to Show Cause and	the entry of an Order thereon, let all proceedings on the part of the
Plaintiff(s), Plaintiff(s) attorney(s) and agent(s) and any h	farshal or Sheriff of the City of New York for the enforcement of a
Indement be stayed.	
SERVICE of a copy of this Order to Show Cause, and to	nexed Affidayir, upon the:
Plaintiff(s) or named attorney(s): (Indge to Initial)	Sheriff or Marshal: (Fudge to Initial)
by Personal Service by "In Hand Delivery" by Certified Mail, Return Receipt Requested by First Class Mail with official Post Office Certificate of Mailing	by First Class Mail with official Post Office Certificate of Mailing
on or before Harch Hom, 2015, shall b	c deemed good and sufficient
PROOF OF SUCH SERVICE may indicated above on the return da	be filed with the Clerk in the Part to of this Order to Show Cause.
Mail to Attorney or party:	Sheriff/Marshat:
Kavulish & Associates PC (Counsel for PR), 181 Westchester Avenue, Suite 500C, Port Chester, NY 10573	Marshal of the City of New York Biegel, Stephen, Marshal 109 W 38 Street Suite 200 New York, NY 10018-3615
Minor 10 2015	
March 10, 2015  DATE	HON. VERO A CINH COOR FORE (NYC)

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Kelly street reality Inc, Plaintiff.

– against –

LAURA MARRERO,

Defendant.

Index No. cv10035008bx

AFFIDAVIT IN SUPPORT OF AN

ORDER TO SHOW CAUSE

To Vacate a Judgment For Fallure

to Answer

Movent's address: 1468 BRYANT AVE, Apt. 4B BRONX, NY, 10460

State of New York, County of Bronx ss.:

LAURA MARRERO, being duly swom, deposes and says:

- I am a defendant and I am making this request in support of the Order to Show Cause to vacate a default judgment, and dismiss this case for tack of personal jurisdiction pursuant to CPLR 5015(a)(4).
- 2. The court lacks personal jurisdiction because the Summons and Complaint were not served properly. I WAS NOT SERVED I DID NOT RECIEVE ANY PAPER REGARDING THIS CASE AND I WAS BURNED OUT OF THIS RESIDENCE.
- Alternatively, the default judgment should be vacated pursuant to CPLR 5015(a)(1)
  and the case restored to the calendar and the attached Proposed Answer deemed
  limely filed.
- 4. I did not file an answer to the Complaint with the court because of the following excusable default:
  - I never received the court papers.
- 5. I have the following meritorious defense(s):
  - I do not owe the money.
  - b. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA

Affidavit in Support of an Order to Show Cause to Vacate a Default Judgment Made using the NYS Courts FREE DIY Forms

Page 1 of 2

WHY I AM BEING SUED AND NEVER FOUND OUT ABOUT THIS UNTIL.

I STARED BEING GARNISHED FROM MY PAY CHECK WHICH IS NOW

YEARS LATER AFTER LIVING THEIR.

- 6. I want to tell the judge the following: I DONT BELIEVE I OWE THIS DEST ME AND MY FAMILY WERE BURBNED OUT OF THIS APARTMENT WE LOST EVERYTHING YEARS LATER I AM BEING SUED MOVEING FOWARD THIS GARNISHMENT HAS PUT A FINICHAL HARDSHIP ON ME AND MY FAMILY.
- 7. I have not asked for a previous Order to Show Cause in this case.
- 8. My salary has been garnished. Lam employed at ALHED BARTON SECURITY SERVICES LLC ATTN PAYROLL 161 WASHINGTON ST STE 600 8 TOWER BRDG CONSHOHOCKEN PA 19428.

### Relief

9. WHEREFORE, I request that the judge vacate any judgment, lift any and all restraints and executions, order restitution, and upon vacatur, dismiss this case for lack of personal jurisdiction, or in the alternative, deem the attached Proposed Answer timely filed, restore the case to the calendar, grant me permission to serve these papers myself, and grant me such other and further relief as may be just.

Affidavit in Support of an Order to Show Cause to Vacate a Default Judgment Made using the NYS Courts FREE DIY Forms

Page 2 of 2

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Kelly street reality inc.
Plaintiff,

Index No. cv10035008bx PROPOSED ANSWER CONSUMER CREDIT TRANSACTION

– against –

LAURA MARRERO,

Defendant,

Movani's address: 1468 BRYANT AVE, Apt. 4B BRONX, NY, 10460

LAURA MARRERO, answers the Complaint as follows:

- 1. General Denial: I deny the altegations of the Complaint.
- 2. I do not owe the money.
- 3. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY
  UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA WHY I AM BEING
  SUED AND NEVER FOUND OUT ABOUT THIS UNTIL I STARED BEING
  GARNISHED FROM MY PAY CHECK WHICH IS NOW YEARS LATER AFTER
  LIVING THEIR.
- I have the following counterclaim(s): I WANT WHAT WAS GARNISHED. I am seeking \$3,000.

Proposed Answer -- Consumer Credit Transaction
Made using the NYS Courts FREE DIY Forms

Page 1 of 2

COUNTY OF BRONX: PART 34	INDEX NO. 100350/08 FILE NO. 4778
KELLY STREET REALTY, INC.,	* **
Plaintiff,	AFFIRMATION IN
-against-	OPPOSITION
LAURA MARRERO,	
Defendant.	
X	

CYTATE COOK DOOR CARE OFFICE CORNERS

Matthew Kasper, Esq., an attorney duly admitted to practice law before the Court of the State of New York, hereby affirms under the penalty of perjury:

- 1. I am an associate of Kavulich & Associates, P.C., attorneys for the Plaintiff herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated upon information and belief, as to those matters I believe them to be true. The basis of my belief is information supplied to me by my client, information contained within the court file and information maintained within my office.
- 2. I make this affirmation in opposition to the Defendant VERONICA MORENO's Order to Show Cause which seeks to vacate the instant judgment issued on default. Please see Respondent's instant Order to Show Cause and Proposed Answer annexed hereto as Exhibit "1."

### STATEMENT OF THE UNDISPUTED FACTS

- 1. The parties executed a lease agreement for the premises known as 928 Kelly Street, Unit 1, Bronx, New York, Plaintiff's building. Annexed hereto as Exhibit "2" is the afficiavit of Anno Lulaj, agent of Plaintiff.
- The term of the lease agreement was for two years commencing October 5, 2002 and ending October 14, 2004.

- 3. Almost immediately thereafter, Defendant began to accumulate rental arrears.
- 4. As such, Plaintiff commenced a nonpayment proceeding in Housing Court under the L&T Index No. 2898/2012.
- Defendant vacated the subject premises on or about October 31, 2014 leaving a substantial cental acrears balance.
- 3. As such, Defendant owes Plaintiff the sum of \$22,838.92 representing rental arrears for the May, 2003 balance of \$625.70 and for the months of June, 2003 through and including October, 2004 at the agreed monthly rent of \$1,306.66.
- 4. Defendant was served with a summons and complaint via conspicuous service on November 8, 2008. Annexed hereto as Exhibit "3" is a copy of the summons, complaint, and affidavit of service.
- 5. The Plaintiff had not been contacted by the Defendant since they vacated the subject-premises and until many years after she was notified by the wage gamishment that was issued by your affirmant's office. Annexed hereto as Exhibit "4" is a copy of the income execution.
  - 6. Defendant now moves to vacate the default judgment issued on February 26, 2009.

# THE DEFENDANT'S INSTANT MOTION DOES NOT DEMONSTRATE AN EXCUSABLE DEFAULT AND MERETORIOUS DEFENSE, THEREFORE THE MOTION SHOULD BE DENIED

- 7. In order to prevail on this instant motion, Defendant must prove both an excusable default and meritorious defense as upon showing of both of those prongs, vacating a default judgment is proper. CPLR 5051(a)(1); Bank of Am. v. Faracco, 89 AD3d 879 [2d Dep't 2011]; Community Preserve. Corp. v. Bridgewater condominiums, LLC., 89 AD3d 784 [2d Dep't 2011].
- 8. Moreover, should Defendant demonstrate a reasonable excuse for the default, a Court must nonetheless uphold the default judgment when the Respondent's papers submitted in support thereof are replete with self-serving, vague, unsubstantiated denials, and unsupported

- It is respectfully stated to the Court that Defendant has failed to demonstrate both prongs and that this motion must be depled
- 10. Defendant alleges that she was not served with the summons and complaint, however she offers no support for this such as an explanation of where she was living at the time or a suggestion as to how process did not end up in her possession.
- 11. A process server's affidavit constitutes prima facie evidence of proper service pursuant to CPLR 308(4). City of New York v. Miller, 2010 NY Slip Op 03059 (2d Dep't 2010).
- 12. Defendant's self-serving and conclusory statements are insufficient to rebut the presumption of service.
  - 13. Moreover, Defendant alleges that she was "burned out of this residence."
- 14. Again, without support or even an inta of specificity as to when this purported fire took place, and what happened during the fire requiring Defendant's vacature.
- 15. In fact, Defendant vacated the apartment due to the commencement of a housing court case as a result of her failure to pay rent. Please see the aforementioned Exhibit "2."
- 16. Accordingly, Defendant fails to set forth a legally cognizable meritorious defense and reasonable excuse for her default.

#### DEFENDANT IS CHARGED WITH NOTICE OF THE INSTANT LITUGATION SUCH THAT HER APPLICATION IS UNITMELY AS A MATTER OF LAW

- 17. CPLR 317 requires an applicant seeking to vacate a default judgment to have an application within one year of knowing of the judgment.
- 18. A New York City Civil Court, in a case on point applying CPLR 317 and involving a judgment-debtor's Order to Show Cause pursuant to CPLR 5051 seeking vacatur of a default judgment after ignoring an income execution of twenty-months denied the judgment-debtor's

application. Elite Recovery Services, Inc. v. R. Howard Hebrich, 31 Misc. 3d 1222, 930 N.Y.S.2d 174 (2011).

19. In denying the judgment-debtor's application for vacatur, the Court discussed its rationale as follows:

Defendant has not set forth any excuse as to why he ignored an income execution against his wages for twenty-months. The execution went into effect in June 2009 and defendant did not make this motion until February 2011. It is not credible that the defendant did not have either actual or constructive knowledge of the litigation as he had been having his wages garnished for over a year. As noted above, the policy of this court is to try to have all cases decided on the merits. However, the justice system assumes that people will act to challenge a judgment wrongfully entered against them within a reasonable amount of time after obtaining notice of it and that they will act in an expeditious manner to address such a situation. The actions of the defendant do not even approach "diligence" let alone "due diligence."

Id. at \*4.

- 20. Here, Defendant was served with an income execution on September 26, 2012.
- 21. As a result, her income was continuously gamished from December 5, 2012 (the first payment) through to the service of the instant Order to Show Cause on or about March 10, 2015 over two years.
- 22. In fact, Defendant states that she "never found out about this until I started being gamished from my pay check ...." Please see the aforementioned Exhibit "1." (emphasis added).
- 23. Defendant admits knowing about the garnishment the day it began, yet waited over two years to make the instant application which, as held in *Elite Recovery*, is not even close to due diligence as required by CPLR 317.
- 24. Therefore, even assuming arguendo that the Defendant offers an excusable default and meritorious defense, the Defendant's failure to address her default in almost 2 years combined

with her knowing disregard for the aforementioned execution measures should not be countenanced.

25. As such, Defendant's Order to Show Cause should be denied as untimely pursuant to CPLR 317.

WHEREFORE, as no legal or equitable basis has been stated or exists, Plaintiff respectfully asks that this Court deny the instant motion.

Dated: April 10, 2015 Port Chester, NY

> Kavwich & Associates, P.C. By: Matthew Kasper, Esq. Attorney for Plaintiff

181 Westchester, Ave., Suite 500C

Port Chester, NY 1057 (914) 355-2074

Page 150

# EXHIBIT 1

		(4748)
Civil Court of the City of New York County of Bronz	DLA	Index Number CV-100350-08/0X
KELLY STREET REALTY INC.		ORDER TO SHOW CAUSE
-ageinst- LAURA MRRENO		To vacate the defendants detaint, and use for judgment, lift restraints and executions, order restitution and dismiss or stay the action for 90 days or restore to the calcader or allow a proposed answer
UPON the annexed affidavic of LAURA MARRERO, herein:	sworn to on March	10, 2015, and upon all papers and processings
Let the Plaintiff(s) or Plaintiff(s) attorney Bronx Civit Court  851 Grand Concourse Bronx, NY 10451 Part 34C - Room 504 on MALIA 23, 2011 at 9:30 AM or as soon thereafter as counse! may be heard, why an o	3/23/	15
court desins appropriate:		
Vacating the defendants default and any judgment, lift	ing testraints and ex-	sentions, ordering restitution or distrissing or
staying the action for 90 days or restoring the action to		
PENDING the hearing of this Order to Show Cause an		
Plaintiff(s), Plaintiff(s) anomey(s) and agent(s) and any		
Judgment be stayed.	THE PARTY OF CHARLES	and only of their topy for the checkers of a
SERVICE of a copy of this Order to Show Cause, and	annezed Affidavir u	now the
Plaintiff(s) or named attorney(s): (Judge to Initial)	Sherist or M Codge to Init	farshal:
by Personal Service by "In Hand Delivery by Certified Mail, Return Receipt Requeste by First Class Mail with official Post Offic Certificate of Mailing	eby	Personal Service by " In Hand Delivery" Certified Mail, Return Receipt Requested First Class Mail with official Post Office
on or before March 16th 2015, shall	be decined good and	sufficient
PROOF OF SOCH SERVICE to: indicated above on the retorn of	ry be filed with the late of this Order to	Clerk in the Part Show Couse.
Mail to Attorney or party: Kavulich & Associates PC (Counsel for Phf), 181 Westchester Avenue, Suite 500C, Port Chester, NY 10573	Skeriff, Marshal Biegel, 109 W 3 Suite 20	Marshal; of the City of New York Stephen, Marshal 8 Street
March 10, 2015	$\searrow$	
DATE	Hon. Verna Su	) / Cr TOTALS
	Hon, Verna Salind	V. T. C. R. H. C. C. B. H. Z. B. S. R. C.

COUNTY OF BRONX

Kelly street reality inc.

- against -

LAURA MARRERO,

Defendant

Index No. cv10035008bx

AFFIDAVIT IN SUPPORT OF AN

ORDER TO SHOW CAUSE

To Vacate a Judgment For Failure

to Answer

Movent's address: 1468 BRYANT AVE, Apt. 48 BRONX, NY, 10460

State of New York, County of Bronx ss.:

LAURA MARRERO, being duly swom, deposes and says:

- I am a defendant and I am making this request in support of the Order to Show
  Cause to vacate a default judgment, and dismiss this case for lack of personal
  jurisdiction pursuant to CPLR 5015(a)(4).
- 2. The court lacks personal jurisdiction because the Summons and Complaint were not served properly. I WAS NOT SERVED I DID NOT RECIEVE ANY PAPER REGARDING THIS CASE AND I WAS BURNED OUT OF THIS RESIDENCE.
- Alternatively, the default judgment should be vacated pursuant to CPLR 5015(a)(1)
  and the case restored to the calendar and the attached Proposed Answer deemed
  timely filed.
- I did not file an answer to the Comptaint with the court because of the following excusable default:
  - a. I never received the court papers.
- I have the following meritorious defanse(s):
  - a. I do not owe the money.
  - b. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA

Affidavit in Support of an Order to Show Cause to Vacate a Default Judgment
Made using the NYS Courts FREE DIY Forms

Page 1 of 2

WHY LAM BEING SUED AND NEVER FOUND OUT ABOUT THIS UPTOF I STARED BEING GARNISHED FROM MY PAY CHECK WHICH IS NOW YEARS LATER AFTER LIVING THEIR.

- 6. I want to tell the judge the following: I DONT BELIEVE I OWE THIS DEBT ME AND MY FAMILY WERE BURBNED OUT OF THIS APARTMENT WE LOST EVERYTHING YEARS LATER I AM BEING SUED MOVEING FOWARD THIS GARNISHMENT HAS PUT A FINICHAL HARDSHIP ON ME AND MY FAMILY.
- 7. I have not asked for a previous Order to Show Cause in this case.
- 8. My salary has been garnished. I am employed at ALIIED BARTON SECURITY SERVICES LLC ATTN PAYROLL 161 WASHINGTON ST STE 600 8 TOWER BRDG CONSHOHOCKEN PA 19428.

#### Relief

9. WHEREFORE, I request that the judge vacate any judgment, lift any and all restraints and executions, order restitution, and upon vacatur, dismiss this case for lack of personal jurisdiction, or in the alternative, deem the attached Proposed Answer timely filed, restore the case to the calendar, grant me permission to serve these papers myself, and grant me such other and further relief as may be just.

Laura Marrero, Defendant

Sworn to before my this \_\_\_\_\_\_\_

Notary Public or Court Clerk

ID. Presented Type: /

Affidavit in Support of an Order to Show Cause to Vacate a Default Judgment Made using the NYS Courts FREE DIY Forms

<sub>69</sub>8¢ 5 of ≤

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX	Index No. cv10035008bx	
Kelly street reality inc, Plainliff,	PROPOSED ANSWER CONSUMER CREDIT TRANSACTION	
– against –	Moyani's address: 1468 BRYANT AVE, Apt.	
LAURA MARRERO, Defendant.	4B BRONX, NY, 10460	
	<b></b>	

LAURA MARRERO, answers the Complaint as follows:

- 1. General Denial: I deny the allegations of the Complaint.
- 2. I'do not owe the money.
- 3. I WAS BURNED OUT OF THIS APARTMENT RED CROSS PICKED MY FAMILY
  UP AND PUT US IN EMERGANCY SHELTER I HAVE NO IDEA WHY I AM BEING
  SUED AND NEVER FOUND OUT ABOUT THIS UNTIL I STARED BEING
  GARNISHED FROM MY PAY CHECK WHICH IS NOW YEARS LATER AFTER
  LIVING THEIR.
- I have the following counterciaim(s): I WANT WHAT WAS GARNISHED. I am seeking \$3,000.

Proposed Ariswer - Consumer Credit Transaction
Made using the NYS Courts FREE DIY Forms

Page 1 of ©

#### VERIFICATION

State of New York, County of Bronx 8s.:

LAURA MARRERO, being duly sworn, deposes and says: I am the Defendant in this action, I have read the Proposed Answer Consumer Credit Transaction and know the contents to be true to my own knowledge, except for those matters alleged to be on Information and belief, and as to those matters, I believe them to be true.

Laura Marriero, Defendant

Swom to MAR in this 5 day

Notary Public or Court Clock

I.D. Presented Type: //wbl... No I.D. Provided

Proposed Answer - Consumer Credit Transaction
Made using the NYS Courts FREE DIY Forms

Page 2 of 2

# EXHIBIT 2

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX	Index No. 100350/08 File No. 4778
KELLY STREET REALTY, INC.,	
Plaintiff,	AFFIDAVIT
-against-	
LAURA MARRERO,	
Defendant.	
STATE OF NEW YORK ) ) SS COUNTY OF BRONX )	

- I, Anto Lulaj, being duly sworn deposes and says:
- 1. I am the agent for the Plaintiff, KELLY STREET REALTY, INC., herein and, as such, I am fully familiar with the facts and circumstances of this proceeding as I am responsible for, *inter alia*, leasing of apartments, and overseeing maintenance of the property when required.
  - 2. I was the agent during the time in issue of this proceeding.
- 3. The parties executed a lease agreement for the premises known as 928 Kelly Street, Unit 1, Bronx, New York, Plaintiff's building.
- 4. The term of the lease agreement was for two years commencing October 5, 2002 and ending October 14, 2004.
  - 5. Almost immediately thereafter, Defendant began to accumulate rental arrears.
- 6. As such, Plaintiff commenced a nonpayment proceeding in Housing Court under the L&T Index No. 2898/2012.
- 7. Defendant vacated the subject premises on or about October 31, 2014 leaving a substantial rental arrears balance.

- 8. As such, Defendant owes Plaintiff the sum of \$22,838.92 representing rental arrears for the May, 2003 balance of \$625.70 and for the months of June, 2003 through and including October, 2004 at the agreed monthly rent of \$1,306.66.
- 9. My attorneys have advised me that judgment was entered against the Defendant and that we have been collecting on an income execution since December, 2012.

WHEREFORE, your deponent respectfully requests that the instant motion be granted in all respects and for such other and further relief as to this Court may seem just and proper.

Swom

before me this

7th day of April, 2015

Anto Lulaj

Natarathablic

GARY KAVULICH
Notary Public, State of New York
No. 02KA6205615
Qualified in Wostchester County
Commission Expires May 11, 2017

# EXHIBIT 3

CONSUMER CREDIT TRANSACTION. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED TO COLLECT THIS DEBT. CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Kelly Street Realty, Inc.,

Plaintiff,

INDEX NO. FILE NO. 4778

-against-

SUMMONS

Place of Venue is Plaintiff's

place of business:

Laura Mairero,

928 Kelly Street Bronx, NY 10459

Defendant(s)

To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at \$51 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum of \$23,338.92 with interest thereon from May I, 2003 together with costs of this agrical

DATED: October 22, 2008

By: Gary Kayntich, Esq., Kavelich & Associates, P.C. Atterney for Planuiff 30 Church Street

Suite 26

New Rochelle, NY 10801

(914) 355-2074

Defendant's Address: Laura Marrero 2303 Belmont Avenue, Apr. 5 Bronx, NY 10458-8343

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summens is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

#### COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$22,838.92 representing rental arrears for the months of May, 2003 balance of \$625.70; June, 2003 through and including October, 2004 at the agreed monthly sum of \$1,306.66 for the premises known as 928 Kelly Street, Apt.#1 Bronx, NY 10459 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$0.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$5500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$22,838.92 plus interest from May 1, 2003 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of 0.000 plus interest from May 1, 2003 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

-		APFIDAVIT OF SERVICE IT OF THE CITY OF NEW YORK	Index No. 100350/08
C	SOUNTY OF	BRONX	Filed:
į	Attorneys: Ka Address: 30	eyulich & Associates, P.C. Church Street, Suite 26, New Rochelle, NY 10801	File No. 4778
-		KELLY STREET REALTY INC.	
	,	LAURA MARRERO.	
;	Aston G. Evar Deponent is no At: 2303 Belo	Fork County of Nassau SS:  15 U, being duly sworn deposes and says:  16 a party herein, is over 18 years of age. On November 8, 2008 a  16 not Avenue, Apt. 5, Bronx, NY 10458 served the within Summ  16 MARRERO. Defendant therin named	er <u>6,41 p.m.</u> rous and Compisint
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	Corporation [ ]	By delivering to and leaving with and that deport person so served and authorized to accept service on behalf of the	nent knew the g Corporation
	Scitable Age Person	By delivering a true copy of each to a person of suitable age and Said premises is recipients [ ] actual place of business [] dwelling state.	
,	Affixing to Door [X]	By affixing a true copy of each to the door of said premises, which [ ] actual place of business [X] dwelling house (place of abode)	
	Mail Copy [X]	On <u>Movember 10, 2008</u> deponent completed service under the last depositing a copy of the Settmons and Completed to the above ad- Chas properly addressed envelope marked "Personal and Confidence depositiony ander the exclusive care and castody of the United State of New York.	dress In a 1* ntial" In an efficial les Post Office In the State
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# Case 1:16-cv-01627-CBA-RLM. Declinent 55-4. Edge 01/2018. Begg 25-24. President 25-45.

## **EXHIBIT 4**

Annual Control of

Note that are not

CIVIL COURT OF THE CIT	LA OB MEM AOBR	,	Court Index	No. 10035W08
Relly Street Realty, Inc.,	Flaintiff.			RECOTTON
Laura Marrora,	Against Defendent(s).			E the State
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WHEREAS,	his execution is issued against L. 2903 Belment Avenue Apt. 6 Brown NY 10458-8343	eura Mariaro	delopdant (ju	dgment (obton)
und said defendant (minnent	deblar) is receiving or will receive from the Allied Barton Sectifity Services LLC Consholmaken, PA 19428—ATTY	151 Washington	ee usave and seide Shreat, Ster. 600 8 1	no in l Comus Hidden
Misse toda † Missorreddig Na	per weak, to wit 5 for far and/studen in.		esekily izotalikasyz 100 Office ex Hubeliyi	

You are directed to esticy the judgment with interest together wite your box and expense, out at all mentes now and decenter one owing to the independent clutter from the Employer percent to CPER & 5231 à 16 U.S.C.1871, at Seq.

Direction to Judgment Debtor: You are notified and expensed within 20 dayle start paying to the Endocrenost Offices wereing a copy of this Increase Recomment on your installationate amounting to 100km on near than the Federal finding set furth in 1. Limitations on the numbered that can be withheld, below? of any and all salary, wages or other interest, haduling any and all overfillers can make the number of the paying and his tallations are other interest and the tests and expenses of this Increase execution and to continue paying such his tallations in the following the interest and the feest and expenses of this Increase execution are fully poid and solidized, and if you fail to do so this Increase Execution will be served from the Engagers by the Engagement Officer.

Direction to the Employee: You are posture and only increased Officer.

Direction to the Employee: You are posture about an increase the Engagement Officer surving a copy of this Increase Execution on yout installments amounting to 10% that no more than the Federal limits set fourth in 1. Limitations on the arroant Cont. can be withheld, below of any and all allows, wages or other increase, including any and all contains contains, commensations or other increase in the Federal limits set for the following and all contains on the expenses of this increase Execution are fully paid and satisfied.

Duted 9/26/2012

we the constraint of the Manager of the contract of

Gary Kavolinh Day.
Kayulinh & Associates, P.C.
181 Westchester Avenue, Suite Soco
Port Cluster, NY 10573
(924) 335-2074

"Employer, " berein, includes any payor of money to Judyment Debus.

#### Important Statement

This imposes execution dispots the withholding of up to 10 percent of the judgment debine's gross income. In certain cases, however, state or federal faw does not permit the withholding of that much of the judgment debtor's gross income. The judgment debtor gross income. The judgment debtor is now York. Civil Fraction Law and Rules & 5233 and 16 United State Code & 1671 of any.

I. Limitation on the amount that can be withheld

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	III. Notice: 7 CPERM 524	For may be able to chaff.	rage this income exe-	sation through the pr	reeduss provided in OPLIES 6231 (f) and
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CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34  X	INDEX NO. 100350/08 FILE NO. 4778	
KELLY STREET REALTY, INC.,		
Plaintiff,	AFFIRMATION OF	
-against-	SERVICE	
LAURA MARRERO,		
Defendant.		
<u></u>		

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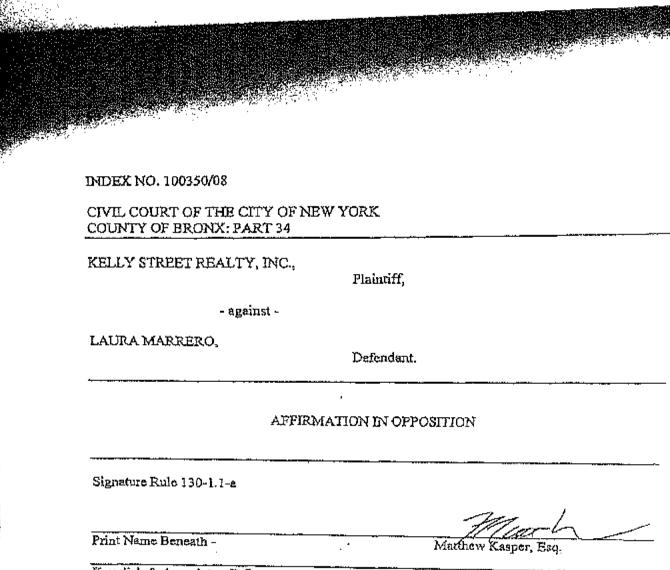
Gary Kavulich, Esq., an attorney duly admitted to practice law before the courts of the State of New York hereby affirms the following under the penalty of perjury.

On April 10, 2015, I served the within Affirmation in Opposition upon the movant in this action, by depositing a true copy in a post-paid envelope addressed to:

Laura Marrero 1468 Bryant Ave., Apt. 4B Bronx, NY 10460

in an official depository under the exclusive dominion and control of the United States Postal Service within the State of New York via regular first class mail

Gary Kavulich, Esq.



Kavulich & Associates, P.C. Attorneys for Plaintiff 181 Westchester Ave., Suite 500C Port Chester, NY 10573 (914) 355-2074



	Civil Court of the City of New York  County of BIND Part 34  Index Number	AV 100350-63 BX
	Kelly Sheet Realty, Inc	
	Ligaria.	ECISION/ORDER
	Defendant(s)/Respondent(s)	
	Defendant ALVIL The Court RUKING To V	arate the default
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Civil Court of the City of New York  County of	Index Number 01 100350 117 PX
Kelly Street Rialty. Inc	
Claimant(s)/Plaintiff(s)/Petitioner(s)	DECISION/ORDER
Laura (Maritie Defendant(s)/Respondent(s)	•
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Civil Court of the City of New York  County of Rect 34  Part 34
Kaly Strut Realty Inc
Claimant(s)/Plaintiff(s)/Petitioner(s)  against  DECISION/ORDER
Defendant(s)/Respondent(s)
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this pedel.
The Matter is Ristored to the contendar for a Die trial
Section 8.
Defendant shall some a copy in this Dedie with motion of entry
This constitutes the decision and order of the Count.
ENTERED BRONX COUNTY
Date City of New York  MAY 1 2 2015  Civil Court  Of the  City of New York  Address Civil Court L SAUROFERS
Date City of New York Lidge, Civil Control Ludge, C

INDEX NO: 100350/08				
CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX				
KELLY STREET REALTY, INC.,				
Plaintiff,				
- against -				
LAURA MARRERO,				
Defendant.				
ORDER TO SHOW CAUSE				
Signature Rule 130-1.1-a				
2				
Print Name Beneath Matthew Kasper, Esq.				

Kavulich & Associates, P.C. Attorney for Plaintiff 181 Westchester Ave., Suite 500-C Port Chester, NY 10573 (914)355-2074

Index Number: Court

CASE SUMMARY

Bronx County Civil Court CV-100350-08/BX

Case Type:

Consumer Credit 10/30/2008 Classification: Filed Date: Status

02/26/2009 Disposed Disposed Reason: Disposed Date:

Judgment(1).Default Judgment

Cause(s) of Action;

KELLY STREET REALTY INC. Plaintiff(s); VS.

LAURA MARRERO Defendant(s):

Breach of Contract or Warranty in the amount of \$23,338.92 with interest from 05/01/2003

KELLY STREET REALTY INC. 

Kavulich & Associates PC - 181 Westchester Avenue, Suite 500C, Port Chester, NY 10574, (914)-555-2074 ext;

(D) LAURA MARRERO - 2303 BELMONT AVENUE, APT 5, BRONX, NY 10458

Brandle

PAPERS RECORDED

Summons and Complaint (Attorney), Filed By: (P) KELLY STREET REALTY INC. 10/30/2008 02/23/2009

Judgment (Default Judgment). Seq 1. Filed Date: 02/23/2009, Total Judgment: \$33,318.67, Entered Date: 02/26/2009, Statust. Enter

(02/26/2009), Creditor(s): (P) KELLY STREET REALTY INC., Dehtor(s): (D) LAURA MARRERO

This report reflects information recorded as of 03/10/2015 03:34 PM. Users should verify the accuracy of information by consulting original court records or sources. The Unified Court System is not responsible for consequential use of this data.

Civil Court of the City of New York	Index Number <u>CV</u>	<u>- 100350 - 08 (78)</u>
County of Bx	Motion Cal. #	Motion Seq. #
Part		
	DECISION/ORDER	
Kally Sharet B	Recitation, as required by CPLR §2219 (a), of the papers	
Kelly Street Realty, Inc.	considered in the review of this I	Motion:
	Papers	Numbered
Claimant(s)/Plaintiff(s)/Petitioner(s)	Notice of Motion and Affidavits	
against (	Order to Show Cause and Affiday	
Laura Marrero	Answering Affidavits	
, and	Replying Affidavity	
Defendant(s)/Respondent(s)	Exhibits	
Upon the foregoing cited papers, the Decision/Or	der on this Motion to	
	<u> </u>	is as follows:
Plaintiff has failed to app	ear for that c	~ c~
dismissed A.	<u> </u>	
dismissed for nonappearer	nce,	
In accordance with T	Valoria C	,
In accordance with J.	ACUTA SETTUCKE	r's order,
dated May 12, 2015, all mo	nies collected	11/1
With the many was at 1		TOUNG CHO
with the how vacated judgmen	ict shall be re	turned to
defendant forthwith.	<del></del>	
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2/10/16	6	
Date	Judge Civil Con-	
1	Judge Civil Coun	
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GP-85 (Revised Secumber 1999)	JUNE SITE	
		Page 175

Laur Warren 1468 Organtave Brenx Newyor 10460

Civil Court of the City of New York 851 Grand Concourse Bronx, New York 10451 CIV-GP-78 (Replaces 43-1006A)

#### PLEASE PRINT

Index No. CU-106 3-50-68. Year

# Civil Court of the City of New York

County of ....

#### NOTICE

Filed papers may not be taken from this office and must be returned to the requisition counter.

PENAL LAW, Sections 175.20 and 175.25 provide a penalty of imprisonment or fine for unlawful removal or alteration of a public record.

against—

#### REQUISITION

SEND TO:

FOR.

Name Lawro Marce 10 Address 1468 Oryant gutys

Date 3-10-7-15